

From: azeemeh@naissancecapital.co.uk
 To: "Michael Carter" <Michael.Carter@nbkny.com>
 Date: 4/30/2019 3:56:40 AM
 Subject: Re: operating statement



Good morning, Michael, they were paying rent, they just didn't pay it on time.

From: Michael Carter <Michael.Carter@nbkny.com>
Date: Monday, 29 April 2019 at 20:57
To: Azeemeh Zaheer <azeemeh@naissancecapital.co.uk>
Subject: RE: operating statement

By the way, is there any particular reason they have not been paying rent, other than the fact that they are also the owner.

From: Azeemeh Zaheer [<mailto:azeemeh@naissancecapital.co.uk>]
Sent: Monday, April 29, 2019 3:55 PM
To: Michael Carter <Michael.Carter@nbkny.com>
Subject: Re: operating statement

I just landed in london - will need to get to my PC.

Ms Azeemeh Zaheer

*Naissance Capital Real Estate Ltd
 Michelin House
 81 Fulham Road, South Kensington
 London SW3 6RW*

+447572449800
azeemeh@naissancecapital.co.uk
www.naissancecapital.co.uk

On Apr 29, 2019, at 8:49 PM, Michael Carter <Michael.Carter@nbkny.com> wrote:

When was that paid?

From: Azeemeh Zaheer [<mailto:azeemeh@naissancecapital.co.uk>]
Sent: Monday, April 29, 2019 3:47 PM
To: Michael Carter <Michael.Carter@nbkny.com>
Subject: Re: operating statement

Circa \$700k.

We will get the outstanding arrears.

Ms Azeemeh Zaheer

*Naissance Capital Real Estate Ltd
 Michelin House
 81 Fulham Road, South Kensington
 London SW3 6RW*

+447572449800

5/5/2021

001732

REPORTER'S RECORD

VOLUME 2 OF 3 VOLUME(S)

TRIAL COURT CAUSE NO(S). 2019-61734

GROVE ENTERPRISES, LLC. § IN THE DISTRICT COURT OF
Plaintiff(s) §

VS. §

DALIO HOLDINGS I, LLC, § HARRIS COUNTY, TEXAS,
BRADLEY STEVEN PARKER AND §
XENIA BIGGS, AS TRUSTEE, §
Defendant(s) §

VS. §

HAROLD GIBSON POLK, JR., §
Third-Party Defendant § 189TH JUDICIAL DISTRICT

MOTION FOR TEMPORARY INJUNCTION

BE IT REMEMBERED that on the **30th** day of
Septmeber, 2019, the following proceedings came on to be
heard in the above-entitled and numbered cause before
the Honorable Scot "dolli" Dollinger, Judge presiding
for 189th Civil District Court, Houston, Harris County,
Texas:

Proceedings reported by computerized shorthand
machine.

A P P E A R A N C E S:

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-AND-

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ATTORNEY FOR THE DEFENDANT:

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I N D E X:

September 30, 2019

Volume 1

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EXHIBITS

PLAINTIFF'S EXHIBITS:

<u>No.</u>	<u>Description</u>	<u>Offered</u>	<u>Admitted</u>
1	Realtors Commercial Contract..	5	6
2	Corporate Resolution of Signing Authority.....	5	6
3	Real Estate Appraisal Report..	5	6

DEFENDANT'S EXHIBITS:

<u>No.</u>	<u>Description</u>	<u>Offered</u>	<u>Admitted</u>
1	Realtors Commercial Contract..	5	6
2	Tenancy Schedule I.....	5	6
3	Real Estate Appraisal Report..	5	6

1 DEFENDANT'S EXHIBITS:

2	<u>No.</u>	<u>Description</u>	<u>Offered</u>	<u>Admitted</u>
3	4	Jeta11 e-mail dated 1-10-19...	62	62
4	5	Warranty Deed.....	5	6
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P R O C E E D I N G S:

September 30, 2019

Volume 2

THE COURT: On the record. Let's see. Cause No. 2019-61734, Grove Enterprises against Dalio Holdings I, LLC, and others. This is a hearing on the issuance of a temporary injunction.

Raise your right hand.

(Witness is duly sworn)

THE COURT: All right. You may be seated. If counsel will make their announcements, please, and then you may inquire.

MR. JUNELL: Thank you. For the Plaintiff, Mark Junell.

MR. PENNELL: Kevin Pennell for Dalio. And, Judge, we have -- counsel have agreed to pre-admit some of the exhibits.

THE COURT: All right. Go ahead. You can make your statement.

MR. PENNELL: Plaintiff's Exhibits 1, 2, 3, 12 and 13 are admitted. And Defendant Dalio's Exhibits 1, 2, 3, 5, 6, 7, 8, 10, 11, 12, 13, 14, 17, 18, 19, 21, 22, and 23. Exhibit 23 is not an our exhibit list. Those are all admitted. Exhibit 23 is at the back of the binder. It's the promissory note between Grove Enterprises and BRELF II, LLC.

1 **THE COURT:** Those are all admitted into
2 evidence as stated. It will be helpful -- if you do
3 have an exhibit list checking all those off to give to
4 the court reporter after the hearing, that will be very
5 helpful.

6 **MR. PENNELL:** Got it. Thank you, Judge.

7 **MR. JUNELL:** May I proceed, Judge?

8 **THE COURT:** Yes, you may.

9 **MR. HAROLD POLK,**

10 having been first duly sworn, testifies as follows:

11 **DIRECT EXAMINATION**

12 **BY MR. JUNELL:**

13 Q. Would you please introduce yourself.

14 A. Harold Polk.

15 Q. Harold, what do you do for a living?

16 A. Real estate.

17 Q. Pull that microphone a little bit closer to
18 you. And when I'm talking to you, if you can, speak up.
19 Mostly my hearing is bad, but the court reporter needs
20 to get everything.

21 What kind of real estate do you do?

22 A. Real estate of like industrial and homes
23 and --

24 Q. Okay. And I'm going to skip all of the other
25 preliminary background information. Let's just talk

1 about the property located at 411. We'll call that the
2 411 property, okay?

3 A. Yes.

4 Q. How did you first come to hear about this
5 property being for sale?

6 A. It was around November I had court on a
7 receivership on a building of 812 Main Street, downtown
8 Houston, and in that we were going for the approval to
9 be signed off by the judge, and I wind up -- the judge
10 wind up allowing J.W. Marriott to bid on the property in
11 court, and I wound up losing that bid in the process.

12 And after that, the lender was very upset
13 because they put all of the time into the deal and got
14 that approved and spent a lot of money on getting that
15 approved and we didn't have a deal.

16 So I wind up reaching out to Ali with
17 Jetall, and he told me he knew of someone that had a
18 property, and I told him that I needed a property with
19 equity. And, you know, it was kind of a situation to
20 where I needed, you know, liquidity and get the deal
21 closed with the lender. And he told me about the 411
22 building.

23 Q. And if you would, please, speak up a little
24 bit louder because I'm still having trouble hearing you.
25 So when you said say "Ali," who is Ali?

1 A. Ali Choudhri.

2 Q. Okay. And did Mr. Choudhri tell you about the
3 building located at 411 North Sam Houston Parkway?

4 A. Yes, sir.

5 Q. Okay. And was that a building that you
6 understood he had some sort of ownership interest in?

7 A. No, sir.

8 MR. PENNELL: Objection, hearsay.

9 THE COURT: Overruled.

10 MR. JUNELL: I asked what he understood.

11 THE COURT: Yep, you can answer.

12 THE WITNESS: No, sir.

13 Q. (By Mr. Junell) And this was in November of
14 2018.

15 A. Yes, sir.

16 Q. Okay. And then so did talks progress between
17 you and Mr. Choudhri or anyone else about purchasing the
18 building located at 411?

19 A. Yes.

20 Q. Okay. And who were you talking to?

21 A. Brad Parker, and then I was introduced to
22 Zeke Agha, who's the owner, to my understanding, of
23 Dalio at the time.

24 Q. Okay. Were you still talking with
25 Mr. Choudhri?

1 A. Yes.

2 Q. Okay. So would it be fair to say that the
3 three people that you had most of the discussions with
4 before your purchase of the building was this person
5 Zeke Agha, Ali Choudhri and Brad Parker?

6 A. Yes.

7 Q. Okay. Who is Brad Parker? Who do you
8 understand him to be?

9 A. Brad parker is a -- he worked for Jetall.

10 Q. And what is Jetall; do you know?

11 A. Jetall was a real estate firm that owned
12 office space.

13 Q. Okay.

14 A. Around --

15 Q. And did -- Mr. Choudhri, was he one of the
16 owners of Jetall?

17 A. Yes.

18 Q. Was Mr. Parker an employee of Mr. Choudhri?

19 A. Yes.

20 Q. And about how long did these discussions take
21 place about the 411 building?

22 A. Took place about -- over a course of two weeks
23 because I had -- it was right before Thanksgiving.

24 Q. Did you go visit the property?

25 A. Yes.

1 Q. More than once?

2 A. Yes.

3 Q. All right. And did you go visit the property
4 because you wanted to do an inspection of it?

5 A. I did. And I -- I walked the property with
6 Zeke and he had kind of walked me and showed me some
7 things about the property and told me that they put a
8 new roof, that they had done some things with the fire
9 system, and the only thing that the building needed at
10 that time was A/C, air conditioning unit.

11 Q. Okay. So Zeke tells you, when you're walking
12 the property, that the building is going to need a new
13 A/C system?

14 A. Correct.

15 Q. And did they tell you, at all, anything at
16 that point in time about how many tenants the building
17 had and what the monthly rentals were?

18 A. Yes. Later he told me that it was like
19 30 percent occupied and that some of the tenants, you
20 know, just wanted to get the new A/C. And he also
21 submitted to me like an e-mail stating that he was in
22 talks with other tenants to occupy the property.

23 Q. Okay. And did he tell you how much the
24 property was earning or how much the property could earn
25 on a monthly basis with these tenants that were in the

1 building?

2 A. Yes. Brad Parker had sent the rent roll.

3 Q. Okay. But this was before this.

4 A. Oh.

5 Q. I'm talking about during the discussions.

6 A. He did tell me that it was a good building and
7 that it was bringing in income. It just needed the new
8 A/Cs.

9 Q. Okay. Did you ever have any conversations
10 with a person by the name of Azeemeh Zaheer?

11 A. Never heard of her until after I looked up
12 Dalio and seen that she was the owner of Dalio, but I
13 never had any dealings with her or even knew who she
14 was.

15 Q. So you never met -- to this day you've never
16 met Azeemeh Zaheer?

17 A. No.

18 Q. And did you sign any agreements or engage in
19 any contracts with Ms. Zaheer prior to your purchase of
20 this building?

21 A. No.

22 Q. Okay. Let's look at Exhibit No. 2. I'm just
23 going to put this on the ELM0 here.

24 MR. PENNELL: That's Grove Exhibit 2,
25 Plaintiff's Exhibit 2?

1 MR. JUNELL: Yes. There we go. Judge,
2 can you see that?

3 THE COURT: Yeah. Do you want it up
4 there? I can put it up there.

5 MR. JUNELL: No, as long as he can see
6 it.

7 THE COURT: And the witness can too.
8 It's in the box.

9 MR. JUNELL: Okay. Perfect.

10 Q. (By Mr. Junell) The signature at the bottom of
11 this page, Azeemeh Zaheer, do you now understand her to
12 be the president of Dalio Holdings I?

13 A. Yes.

14 Q. And this signature right above it, where it
15 says "Mirza Z. Agha," is that the same person that you
16 were talking about, Zeke?

17 A. Yes.

18 Q. Back when you were having these initial
19 conversations, did you think that Zeke was the owner of
20 Dalio?

21 A. Yes.

22 Q. And did Mr. -- or did Zeke, at any time, lead
23 you to believe that he had the authority to represent
24 Dalio or to act on its behalf?

25 A. Yes.

1 Q. And ultimately the purchase contract that you
2 signed when you bought the building was signed by Zeke;
3 was it not?

4 A. Correct.

5 Q. Let's look at that. This is Exhibit No. 1.
6 I'm going to turn to page 13 of Exhibit No. 1. And this
7 is the signature block on the purchase contract. Do you
8 recognize this?

9 A. Yes.

10 Q. Over here on the right, is that your
11 signature?

12 A. Yes.

13 Q. And on the left, who's signature is that?

14 A. Zeke's, Mirza Agha.

15 MR. JUNELL: And for the court reporter,
16 the spelling is M-I-R-Z-A, middle initial is Z, and the
17 last name is A-G-H-A.

18 Q. (By Mr. Junell) So Zeke signed the purchase
19 agreement on behalf of Dalio when you bought this
20 building?

21 A. Yes.

22 Q. Let's go to the first page. The seller of the
23 building is Dalio Holdings I, LLC?

24 A. Yes.

25 Q. And Grove Enterprises, LLC, is the buyer. Is

1 that you?

2 A. Yes.

3 Q. So Grove Enterprises is buying this building
4 from Dalio. Did you know how long Dalio had owned the
5 building prior to your purchase of it?

6 MR. PENNELL: Objection, relevance.

7 THE COURT: Overruled. You can answer.

8 THE WITNESS: No.

9 Q. (By Mr. Junell) Did you know anything else
10 about who owned the property prior to Dalio owning it?

11 A. No.

12 MR. PENNELL: Objection, relevance.

13 THE COURT: Overruled.

14 Q. (By Mr. Junell) The purchase price is listed
15 on the contract at the bottom of page 1, and it's
16 seven-and-a-half million dollars. Is that the purchase
17 price that was agreed to between Grove Enterprises and
18 Dalio for the purchase of the property, 411 North Sam
19 Houston Parkway?

20 A. Yes.

21 Q. Once you decided you were going to buy the
22 building, what kind of due diligence did you do to
23 determine whether or not you were going to agree to pay
24 seven-and-a-half million dollars for this building?

25 A. The lender had ordered an appraisal.

1 Q. Okay. What else?

2 A. The rental income seemed substantial for the
3 building, and I also looked at the building and, you
4 know, I seen that it did need A/Cs, so I knew I would
5 have to replace the A/C units that was on the roof. And
6 it was a really nice building from the way it showed on
7 the exterior.

8 Q. Okay. And did you go -- you visited the
9 building?

10 A. Yes. And also the -- Ali had sent the e-mail
11 stating that Lincoln Properties was investing 120
12 million over the next ten years into the area. So, you
13 know, with someone spending that type of moneys on it, I
14 thought that it would be a sound investment along with
15 income and the property and where it was positioned.

16 Q. Did Dalio provide you -- prior to the sale of
17 this building, did they provide you financial statements
18 or income statements on this building?

19 A. Yes.

20 Q. Did they provide you rent rolls that showed
21 the tenants that were in the building?

22 A. Yes.

23 Q. Do you know whether or not Dalio provided
24 those same documents to the appraiser who was doing an
25 appraisal on the building?

1 A. That's who provided the appraisal of the
2 documents was Brad Parker.

3 Q. Okay. So let's look at Plaintiff's Exhibit
4 No. 3. Do you recognize this document?

5 A. Yes. That's the appraisal.

6 Q. This is the appraisal that was done prior to
7 the purchase?

8 A. Yes.

9 Q. Okay. And on the second page of this, what's
10 the date of the report?

11 A. December the 26th. Actually December
12 the 31st. The date of value was December the 26th.

13 Q. Okay. How -- how close was this in time to
14 the actual closing of the building?

15 A. It was a month before.

16 Q. Okay. You ended up closing on the building in
17 January of 2019, right?

18 A. Yes.

19 Q. Is this a picture of the building right here?
20 Just for context, is that the building?

21 A. Yes.

22 Q. Okay. On page VII, the title of this is
23 called "Salient Facts and Conclusions."

24 Do you see that?

25 A. Yes.

1 Q. Towards the bottom of that page there's a
2 section that's called "Occupancy."

3 Do you see that?

4 A. Yes.

5 Q. Okay. What did that tell you when you saw
6 that number?

7 A. That it was 38 percent occupied.

8 Q. So is -- the appraiser is -- believes that the
9 property is 38 percent occupied at the time he generated
10 this report?

11 A. Yes.

12 Q. Okay. And is this number the same number that
13 Zeke and Brad Parker and Mr. Choudhri were telling you
14 the occupancy was prior to the sale?

15 A. Yes.

16 Q. At any time in this November, December time
17 period were you ever informed that the occupancy was
18 something less than 38 percent?

19 A. No.

20 Q. Did you believe that the building had value at
21 an occupancy of 38 percent?

22 A. Yes.

23 Q. I mean, that you could make the business work?

24 A. Yes, because the rental income it would be
25 able to support the financial obligation.

1 Q. Okay. So on page 18 it says, "Property
2 History."

3 Did you see this section?

4 A. Yes.

5 Q. And there's a sentence in here that says, "Due
6 to reasons of confidentiality we were unable to confirm
7 with the owner the nature of the transaction or details
8 to the sale, such as the sales price." This is -- this
9 is prior to Dalio, when Dalio acquired the property.
10 The appraiser is saying they don't even know how much
11 they got it for.

12 A. Correct.

13 Q. Did you ever hear a number of how much Dalio
14 acquired the property for, either at foreclosure or
15 purchase?

16 **MR. PENNELL:** Objection, relevance.

17 **THE COURT:** Overruled.

18 **THE WITNESS:** No.

19 Q. (By Mr. Junell) Did anybody tell you anything
20 about the history of how Dalio came to acquire that
21 property six months earlier?

22 **MR. PENNELL:** Objection, hearsay.

23 **THE COURT:** Overruled.

24 **MR. JUNELL:** I'm sorry. Answer Harold.

25 **THE WITNESS:** No.

1 Q. (By Mr. Junell) On page 68 there's a couple
2 photographs of a tenant and one of the spaces. Do you
3 see that?

4 A. Yes.

5 Q. Okay. And if you zoom in on the sign here,
6 one of the tenants -- this one is -- is it Tucker
7 Energy?

8 A. Correct.

9 Q. Okay. And Tucker Energy ended up leaving
10 right around the same time that you bought this
11 building?

12 A. Correct.

13 Q. Okay. Did you ever have any dealings with
14 Tucker Energy prior to the purchase of the building?

15 Did you ever talk to them at all?

16 A. No.

17 Q. Do you know why Tucker Energy left the
18 building?

19 A. No.

20 Q. On page 164 is we see the -- the page that
21 says "411 North Sam Houston Capex." Do you see that?

22 A. Yes.

23 Q. Tell the Judge what that -- what that is for?

24 A. This is a report that states what type of work
25 needed to be done and the capital expenditures that

1 would need to take place in order to bring the building
2 up to market.

3 Q. Okay. So this was a statement of what kind of
4 capital expenses -- expenditures need to be made in
5 order to repair the building after you purchased it?

6 A. Correct.

7 Q. So you knew ahead of time that you were going
8 to have to put a new A/C system in or an HVAC system
9 when you purchased the building?

10 A. Correct.

11 Q. And have you done that?

12 A. Yes.

13 Q. How much money did you spend on putting in a
14 new HVAC system?

15 A. We spent over almost half a million dollars on
16 that property.

17 THE COURT: Is that just for the HVAC?

18 THE WITNESS: HVAC was like 300.

19 THE COURT: Okay.

20 Q. (By Mr. Junell) Okay. And I'll talk to you at
21 the end a little bit about the other expenses. We'll
22 come back around to that.

23 On page 166 of this appraisal is a
24 document that says "Tenancy Schedule." Do you see that?

25 A. Yes.

1 Q. Is this the rent roll?

2 A. Correct.

3 Q. Okay. So -- I'm sorry. Was this rent roll --
4 this was provided by Dalio or Mr. Parker or
5 Mr. Choudhri?

6 A. It was provided by Brad Parker.

7 Q. Okay. And he gave this not just to you, but
8 he also gave it to the appraiser who was doing the
9 evaluation?

10 A. Correct, and the lender.

11 Q. And what?

12 A. The lender.

13 Q. And the lender. And the lender is who?

14 A. Broadmark.

15 Q. Okay. I'm going to zoom in real close because
16 this one is a little hard to read. The second one on
17 here is -- do you see that?

18 A. McClenney Moseley & Associates.

19 Q. McClenney Moseley Associates?

20 A. Correct.

21 Q. They're listed as a tenant on the rent roll?

22 A. Yes.

23 Q. Are they a tenant of this building today?

24 A. No.

25 Q. They've moved out?

1 A. Correct.

2 Q. And they sued you. So they sued the building,
3 didn't they?

4 A. They sued North Belt, Dalio, myself, Land
5 Park, which was a management company I had hired after I
6 acquired the building.

7 Q. And that lawsuit is still active?

8 A. To my understanding it's still active on other
9 parties, but they settled with myself and removed Land
10 Park from that lawsuit as well. But they're still suing
11 North Belt and Dalio.

12 Q. Did you -- were you ever told prior to buying
13 this building that McClenney Moseley, the law firm, was
14 having problems with its leases and was going to either
15 vacate the premises or file a lawsuit against the
16 building?

17 A. No.

18 Q. Okay. Did you ever hear about that at all?

19 A. No.

20 Q. When did you first learn there was any type of
21 problem with McClenney Moseley?

22 A. Once they filed the lawsuit.

23 Q. And you received it?

24 A. Correct.

25 Q. Okay. Let's go to the next one.

1 A. Zander Homes.

2 Q. Zander Homes. They're listed as a tenant on
3 this rent roll?

4 A. Yes.

5 Q. Is Zander Homes still a tenant?

6 A. No.

7 Q. And Zander Homes moved out shortly after you
8 purchased the building?

9 A. Correct.

10 Q. Okay. If we go down two more, do you see
11 that? I don't know if you can read that or not. Can
12 you read that? I have a cleaner copy that we'll look
13 at.

14 This is Koasati Construction Company.
15 Are they listed as a tenant --

16 A. Yes.

17 Q. -- in the rent roll?

18 A. Correct.

19 Q. And are they a tenant of the building
20 currently?

21 A. No.

22 Q. Did they move out before you bought the
23 building?

24 A. Yes.

25 Q. Did Brad Parker, Mr. Choudhri, or anyone at

1 Dalio ever tell you that Koasati Construction, prior to
2 this appraisal being done and prior to the closing --
3 scratch that.

4 Prior to this appraisal being done, did
5 they ever tell you that Koasati Construction was having
6 problems with its lease and intended to vacate the
7 building?

8 A. No.

9 Q. At some point you were let know in an e-mail
10 that Koasati Construction was leaving and that was right
11 before closing?

12 A. Correct.

13 Q. Okay. Let's look at the next page of the rent
14 roll. Covenant Global, was that a tenant that was
15 listed on the rent roll?

16 A. Yes.

17 Q. And are they a tenant of the building anymore?

18 A. No.

19 Q. Were you ever told anything about any kind of
20 dispute that Covenant had or the fact that they were
21 going to leave the building?

22 A. No.

23 Q. Did you believe that Covenant was an income
24 producing tenant --

25 A. Yes.

1 Q. -- at the time you bought the building?

2 A. Yes.

3 Q. Tucker Energy Services, we talked about them.
4 They're listed as a tenant. Were they a tenant -- are
5 they a tenant of the building now?

6 A. No.

7 Q. And then Cunningham Lindsey is listed as a
8 tenant on this rent roll, correct?

9 A. Correct.

10 Q. And they're not a tenant anymore?

11 A. No.

12 Q. In fact, Cunningham Lindsey ended up walking
13 their lease several years early, correct?

14 A. Correct.

15 Q. And they also filed a lawsuit?

16 A. Correct.

17 Q. Is that lawsuit pending?

18 A. No, it's been settled.

19 Q. Okay. And did you ever receive any proceeds
20 from the settlement for that lawsuit?

21 A. No.

22 Q. Okay. So they sued Dalio or Office North
23 Belt, the prior owner?

24 A. Correct.

25 Q. And that lawsuit settled after you closed this

1 building?

2 A. Correct.

3 Q. So you should have been the owner of that
4 lease?

5 A. Correct.

6 Q. And they went ahead and settled the lawsuit
7 for a lease that they no longer owned?

8 A. That's correct. The leases were to transfer
9 when I acquired the building, and, as I found out later,
10 that they had filed the lawsuit prior to me taking
11 ownership of the building, and the lawsuit was settled
12 in June or July of this year, and it was like 600,000
13 left on their lease.

14 Q. Cunningham Lindsey left the building six
15 months before you bought it, right?

16 A. Yes.

17 Q. And yet their name is still on this rent roll
18 that was provided to the appraiser in December of 2018?

19 A. Correct.

20 Q. And they moved out in July of 2018 or
21 somewhere in that time period?

22 A. That was the year prior.

23 Q. Okay. And did anyone at Dalio or
24 Mr. Choudhri, Mr. Parker, ever tell you that Cunningham
25 Lindsey had filed a lawsuit on its lease?

1 A. No.

2 Q. Okay. Did -- when you bought this building,
3 did Mr. Parker give you a copy of the Cunningham lease?

4 A. Yes.

5 Q. Did you assume and believe at the time that
6 they were going to be a paying tenant in this building?

7 A. Correct.

8 Q. And, ultimately, when that case was settled,
9 you received no proceeds from it?

10 A. No, sir.

11 Q. And I'm going to zoom in. This is page 168 of
12 the appraisal. And it's a little blurry. I'm looking
13 at this line right here. Do you see that?

14 A. Yes.

15 Q. Can you see what that says? It says "Occupied
16 Area."

17 A. Correct.

18 Q. I can read it a little better when it's on the
19 paper. And it gives you a square footage. And over
20 here there's a number. Can you read that number?

21 A. 38.0.

22 Q. 01?

23 A. One.

24 Q. So this -- this sheet that was given to the
25 appraiser in December was stating that the occupancy of

1 the building was 38.01 percent?

2 A. Correct.

3 THE COURT: Is the square footage, what,
4 about 115,000?

5 MR. JUNELL: Of rentable space?

6 THE COURT: Yes.

7 MR. JUNELL: Yes, about 114 or so.

8 THE COURT: Okay.

9 MR. JUNELL: And this number, it says
10 43,000 or so is occupied.

11 THE COURT: Square feet?

12 MR. JUNELL: Square feet, that's right.

13 Q. (By Mr. Junell) And it didn't turn -- we're
14 going to skip ahead real quick. It didn't turn out that
15 38 percent was occupied, was it?

16 A. No, sir.

17 Q. What's the actual occupancy more like after
18 all these tenants have left, after you bought this
19 building?

20 A. Like 19 percent.

21 Q. So the next page is that we're looking at is
22 page 171, and this is a pro forma that was provided to
23 the appraiser. Do you see that?

24 A. Yes.

25 Q. Did you look at that?

1 A. Yes.

2 Q. Okay. And this says that -- this lists base
3 rental income of \$1.9 million in a year?

4 A. Correct.

5 Q. And does that work out to be about a \$160,000
6 a month in rental income?

7 A. Yes.

8 Q. And the building, how much income does the
9 building actually make?

10 A. Currently?

11 Q. Yeah, on a monthly basis.

12 A. About 20,000.

13 Q. Okay. So that's different than the 160,000
14 that might be represented in this pro forma?

15 A. Correct.

16 Q. Okay. So did you rely on the representations
17 that were made to you regarding the rent that the office
18 was supposed to generate?

19 A. Yes.

20 Q. Okay. And did you rely on the income
21 statements that were provided to you by Dalio?

22 A. Yes.

23 Q. Okay. Let's look at Plaintiff's Exhibit
24 No. 4. This is an income statement. Was this given to
25 you by somebody?

1 A. Brad Parker.

2 Q. Brad Parker. And he gave this to you prior to
3 the sale?

4 A. Yes.

5 Q. Okay. The date up at the top of this says,
6 "November the 28th, 2018." Do you see that?

7 A. Yes.

8 Q. Okay. And this income statement is for
9 January through December of 2017, right?

10 A. Correct.

11 Q. So it shows all the income and financials for
12 the year 2017?

13 A. Correct.

14 Q. Okay. And the total rental income, what does
15 it say?

16 A. \$736,752.60.

17 Q. Okay. And does that work to be about \$61,000
18 a month worth in rent?

19 A. Yes.

20 Q. Now, if we go to the third page of that same
21 statement, they give us the 2018 numbers. Do you see
22 that?

23 A. Correct.

24 Q. And the period on this doesn't go the whole
25 year because it only is up through Q-3. They haven't

1 run the Q-4 numbers I guess. Do you see how it says
2 January of '18 through September of '18?

3 A. Yes.

4 Q. And what does it list the rental income at for
5 2018?

6 A. \$407,311.28.

7 Q. And what does that come out to per month?

8 A. About 52,000.

9 Q. Okay. And you said that the property actually
10 earns you only about 20,000 a month?

11 A. Correct.

12 Q. Less than half of this number?

13 A. Yes.

14 Q. Is that correct?

15 A. Yes.

16 Q. This is Exhibit 5. This is an e-mail that was
17 sent to you by who?

18 A. Brad Parker.

19 Q. And remind us, Brad Parker is an employee of
20 Jetall. He doesn't work for Dalio, does he?

21 A. No.

22 Q. Do you know why Mr. Parker was e-mailing you
23 all these financial statements on behalf of Dalio?

24 A. No. He just said that he was helping out with
25 the transaction is what he said.

1 Q. Okay. And he works for Mr. Choudhri. He's
2 Mr. Choudhri's employee?

3 A. Correct.

4 Q. Okay. And on January 7th, 2019, he sends an
5 e-mail. And what does he attach to that e-mail?

6 A. Here's the updated rent roll.

7 Q. Okay. And how -- how -- how early was this
8 before you actually closed on the building?

9 How close in time were we?

10 A. About three days. The lender had requested an
11 updated rent roll.

12 Q. Okay. So the lender had requested the updated
13 rent roll and Mr. Parker is sending it to you on
14 January 7th of 2019?

15 A. Correct.

16 Q. All right. And he attached a spreadsheet?

17 A. Yes.

18 Q. And that spreadsheet was the same tenancy
19 schedule that we just looked at, right?

20 A. Correct. That was on the appraisal.

21 Q. Okay. It happened to be the same one that was
22 attached to the appraisal from the month earlier?

23 A. Correct.

24 Q. And did it still list all these tenants,
25 McClenney Moseley, Zander Homes, Koasati Construction,

1 Covenant Global, Tucker Energy and Cunningham Lindsey?

2 A. Yes.

3 Q. And none of those tenants are in the building
4 today, correct?

5 A. No.

6 Q. And this rent roll that Mr. Parker sent you on
7 January 7th still showed that the occupancy of the
8 building was 38 percent?

9 A. Correct.

10 Q. And it's not -- it was not 38 percent at that
11 time?

12 A. No.

13 Q. Did Mr. Parker ever tell you that Cunningham
14 Lindsey was engaged in a lawsuit over the lease on the
15 building and that that might effect your value of the
16 building?

17 A. No.

18 Q. Did he ever tell you at all that they were in
19 any kind of dispute?

20 A. No.

21 Q. Did Mr. Parker ever tell you that any of the
22 tenants were having problems with a lease or with the
23 property at all or any kind of complaints?

24 A. No.

25 Q. Okay. Did he ever tell you that Cunningham

1 Lindsey had left the property because they claimed
2 constructive eviction?

3 A. No.

4 Q. This is Exhibit No. 7. And up here this is --
5 the date is January 4th, 2019, so it's the same week as
6 the one we just saw. And tell me what this is.

7 A. This is the e-mail that was sent with all of
8 the leases.

9 Q. Okay. This is a Dropbox link that Brad Parker
10 sent you?

11 A. Correct.

12 Q. And when you click this link, what does it do?

13 A. It gives you a list of all of the current
14 leases for the building.

15 Q. Okay. It's a folder that has all of the
16 tenants with their leases in there, right?

17 A. Yes.

18 Q. So you can look at the leases and see how long
19 the lease goes for and who the tenant is and determine
20 what the -- what the rentals are going to be?

21 A. Correct.

22 Q. Were the leases for all six of those tenants,
23 Covenant Global, Koasati, Tucker, Cunningham Lindsey,
24 McClenney Moseley, all those entities, were all those
25 leases in this file?

1 A. Yes.

2 Q. So on January 4th, 2019, did Mr. Parker send
3 you the leases for all these tenants that are now gone?

4 A. Correct.

5 Q. Okay. This is Exhibit No. 9. This is a
6 letter that was sent or could you tell the court what
7 this is.

8 A. "Notice to Property Owner/Landlord Requesting
9 Immediate Repairs," September the 20th, 2018.

10 Q. Okay. And this is a letter that was sent that
11 says, "We are officially taking a second step in
12 notifying you of ongoing problems in our office
13 building."

14 MR. PENNELL: Judge, I'm going to object
15 as hearsay to this document. If he wants to try to
16 admit it and then ask the witness about it, that's fine.
17 But until then it's hearsay.

18 THE COURT: What exhibit number is it?

19 MR. JUNELL: It's Exhibit No. 9.

20 MR. PENNELL: Plaintiff's 9.

21 THE COURT: Plaintiff's 9.

22 MR. PENNELL: Yes.

23 MR. JUNELL: I'm not offering it for the
24 truth of the matter asserted.

25 MR. PENNELL: He's still got to be able

1 to authenticate it.

2 THE COURT: Yeah, I need more foundation.

3 MR. JUNELL: Your Honor, I'm asking him
4 if he was ever made aware -- when he was made aware of
5 these complaints, not the fact that whether the
6 complaints had any merit but just what he knew and what
7 he wasn't told about it.

8 MR. PENNELL: Same objection.

9 THE COURT: Overruled. You can answer
10 the question. You're not admitting it into evidence
11 right now?

12 MR. JUNELL: No, that's fine.

13 THE COURT: Okay. You can ask him about
14 it.

15 Q. (By Mr. Junell) Mr. Polk, did you ever -- were
16 you ever told prior to your purchase of this building
17 that a bunch of the tenants had gotten together and
18 banded together to write a letter to the owners of the
19 property?

20 A. No.

21 Q. Were you aware or were you ever told by anyone
22 that the tenants that were in the building had serious
23 complaints about the condition of the building and the
24 management of the building prior to your purchase?

25 A. No.

1 Q. If the tenants wrote a letter in September of
2 2018, how many months before your closing was that?

3 Four months?

4 A. Four months.

5 Q. So four months before you bought the building,
6 how many tenants are on this letter? Can you tell?

7 A. One, two, three, four, five, six, seven.

8 Q. Okay. So seven tenants are signing a letter
9 to Dalio, the owner, saying that the building condition
10 is unacceptable, and Dalio never told you about this.

11 A. No.

12 Q. Okay. This top tenant, Zander Homes, is a
13 tenant that's moved out, correct?

14 A. Correct.

15 Q. Covenant Global Logistics, the second tenant,
16 is also a tenant that's now moved out?

17 A. Correct.

18 Q. McClenney Moseley is a tenant that's moved out
19 and sued?

20 A. Correct.

21 Q. Okay. And then do you know who this one is?

22 A. Suite 280. They're still there. It's a
23 doctor.

24 Q. Tucker Energy, the second to the last one down
25 there, is also a tenant that's moved out?

1 A. Correct.

2 Q. Okay. And you were never made aware of the
3 condition of this -- of the property with regard to the
4 tenants' complaints about it prior to your purchase?

5 A. No.

6 Q. When did you first find out about this letter?

7 A. When Cunningham Lindsey was suing me because
8 they had left, they vacated the property.

9 Q. Okay.

10 A. One of the tenants, I think it was -- it was
11 an attorney firm, McClenney Moseley & Associates.

12 Q. This is Exhibit 10. Do you recognize this?

13 A. Yes.

14 Q. Tell the court what this is.

15 A. This is a letter that came from Zander Homes
16 stating that they were vacating the property.

17 Q. Okay. This letter was actually sent to you,
18 right?

19 A. Correct.

20 Q. And it was copied to Dalio and Land Park and
21 it was sent February 7th. That's after you bought the
22 building.

23 A. Correct.

24 Q. And do you see this second sentence, it says,
25 "While we have already formally met with and notified

1 the previous owner of Dalio Holdings, LLC, on or about
2 January 10th in our office suite in 210, this letter is
3 as a secondary due diligence for you as a new property
4 owner of our intentions."

5 **MR. PENNELL:** Objection, hearsay.

6 **THE COURT:** Overruled.

7 Q. (By Mr. Junell) Were you ever made aware that
8 Zander Homes had already met with Dalio prior to your
9 purchase of the building to complain about the condition
10 and the management of the building?

11 A. No.

12 **MR. PENNELL:** Objection, hearsay.

13 **THE COURT:** Overruled.

14 **THE WITNESS:** No.

15 Q. (By Mr. Junell) And when did you first find
16 out about this letter from Zander Homes about their
17 intention to vacate the property?

18 A. February. When they were moving out, they
19 submitted another letter stating why they were moving
20 out because of the previous letter that was sent out on
21 September 20th of 2018.

22 Q. Okay. And it says, "The ongoing breaches of
23 contracts by the building's property owners and property
24 management company has potentially cost us over
25 \$1.25 million lost revenue during this period."

1 Did they ever tell you that prior to your
2 purchase?

3 A. No.

4 Q. And the next sentence says that they notified
5 the previous owners and Jetall Properties and then Dalio
6 of the ongoing issues, and then they all sent that group
7 tenant letter, but you were never made aware of any of
8 that?

9 A. No.

10 **MR. PENNELL:** Objection, hearsay.

11 **THE COURT:** Overruled.

12 Q. (By Mr. Junell) Were you ever made aware that
13 Zander Homes had any type of problem with its lease or
14 the condition of the property with regard to how it was
15 managed prior to your purchase?

16 A. No.

17 Q. And Zander Homes is no longer a tenant?

18 A. No, they're not there anymore.

19 Q. But they were a tenant that was listed on the
20 rent roll that was provided by Mr. Parker on January
21 7th?

22 A. Yes.

23 Q. And after you -- Mr. Parker sent you an e-mail
24 that at some point discussed the fact that Cunningham
25 Lindsey had vacated the premises and was delinquent. Do

1 you remember that or you've seen it now?

2 A. I've seen it, but vaguely.

3 Q. How close to the closing was that e-mail?

4 A. Like two days before, like really close. It
5 was -- actually that e-mail was sent on a tread that we
6 were talking about closing docs and when the docs were
7 going to be to the title company to close.

8 Q. Okay. Did you ever -- are you aware of
9 whether or not Mr. Parker ever notified the lender,
10 Broadmark or BRELF, of the fact that a bunch of these
11 tenants had already left the property?

12 A. No.

13 Q. Do you know whether or not Mr. Parker ever let
14 the lender know that -- that at least one tenant had
15 already filed a lawsuit on the property?

16 A. No.

17 Q. Do you know whether or not Mr. Parker ever
18 notified the appraiser, the guy who did the evaluation
19 of this building, whether or not these tenants had
20 actually vacated the premises?

21 A. No.

22 Q. Do you know whether or not Mr. Parker ever
23 provided an updated rent roll to you, to the lender, or
24 to the appraiser regarding the fact that the tenants had
25 left the property?

1 A. No.

2 Q. Okay. To date, have you ever received an
3 updated rent roll from Mr. Parker that showed tenants
4 that were out of the property?

5 A. No.

6 Q. Was one of the obligations that you were
7 supposed to be given the security deposits of the
8 tenants?

9 A. Yes.

10 Q. Okay. So each tenant who signs a lease with
11 an office building, a commercial building like this, has
12 to put down a security deposit?

13 A. Correct.

14 Q. And when you purchased the building, it was
15 Dalio's obligation to turn those security deposits over
16 to you?

17 A. Correct.

18 Q. Did they do that?

19 A. No.

20 Q. Did you receive any money at all for any
21 security deposits?

22 A. No.

23 Q. And have you received any settlement funds at
24 all from any of the delinquent rent amounts for any of
25 these tenants that vacated earlier?

1 A. No.

2 Q. So if Tucker Energy or Koasati or Cunningham
3 Lindsey, if they paid Dalio any money for vacating the
4 property early, you never saw a dime of that?

5 A. No.

6 Q. Let's -- we're going to wrap it up here. And
7 tell the Judge what type of improvements you've made to
8 the property since you've taken ownership.

9 A. Since I've taken ownership I've had the air
10 conditioners, the air handlers on the roof, all three of
11 them have been replaced; the coils have been replaced;
12 the A/C units, the blower fans, have been PMed. The
13 fire suppressant system and sprinkler system, there was
14 pipes that were bust and corroded. I've had those
15 replaced. The electrical control system for the fire
16 sprinkler system has been replaced. All of the security
17 precautions, as far as the fire extinguishers that were
18 out of date, have been updated. I've put a new roof on
19 the control room, what housed the electrical
20 transformers, that was leaking, that I was told that the
21 roof, you know, had just been repaired and also the roof
22 on the building had been repaired, and that's incorrect.
23 I was waiting for my A/C units to be, you know,
24 replaced, and I had to put a new roof on the building.
25 And we've done a lot of exterior work. We've, you know,

1 upgraded a lot of the building's, you know, security
2 precautions as well. Cameras are in place as well.

3 Q. Okay. And why did you do all that?

4 What's the purpose behind doing all that?

5 A. Because I felt as if I can, you know, turn the
6 building around and show the tenants that are still
7 there that I'm not like the previous management company
8 that was there, that I do, you know, believe in progress
9 and I wanted them to see my work and let my work speak
10 for me as to, you know, just owning a property and not
11 doing anything.

12 Q. So are you actively -- as Grove Enterprises,
13 are you actively taking steps to improve the property
14 today?

15 A. Correct.

16 Q. And knowing what you know now versus what you
17 knew back in January, would you have purchased this
18 building if you'd known all the true facts?

19 A. Of course not.

20 Q. Do you believe that the building is worth or
21 valued much less than it was actually sold to you for?

22 A. Yes.

23 Q. Okay. And I know that you're not a real
24 estate appraiser, but what in your estimation would be
25 the decrease in value based on the fact that all these

1 tenants have left?

2 MR. PENNELL: Objection, foundation,
3 Judge.

4 THE COURT: Overruled. You can answer.

5 THE WITNESS: More than half, at least 3
6 to \$4 million because a good aspect of it, the building
7 value, came in on the rent rolls and the financial
8 wherewith all of the building to support the debt.

9 Q. (By Mr. Junell) Okay. And the debt service on
10 this building is about how much per month?

11 A. \$46,000 a month.

12 Q. And how much money do you generate in rental
13 income?

14 A. \$20,000.

15 Q. So you've been coming out of pocket or pulling
16 money from other properties in order to try and rehab
17 this building and keep the building afloat while you try
18 to get new tenants?

19 A. Correct.

20 Q. If the property is foreclosed tomorrow or in
21 the future by Dalio, how will that harm you?

22 A. I lose the asset and also I'm on the line for
23 as a personal guarantee with the first lienholder. And,
24 you know, all of the work that I've put into it, the
25 relationships that were made and bridged from tenants

1 that are still there on premises, you know, would be
2 ruined.

3 Q. And I know that when we were here last time,
4 you were delinquent with the first lienholder, BRELF.
5 Have you made a payment to them to bring that note back
6 into good standing?

7 A. Yes. I made a 193,000 -- I believe it's
8 193,500 something, 38, or somewhere in there.

9 Q. When was that payment made?

10 A. That was made Thursday morning.

11 Q. Okay. So Thursday last week?

12 A. Correct.

13 Q. And as we sit here today, is your loan in good
14 standing with that lender?

15 A. It is in good standing providing the fact that
16 everything is still in place as far as me, you know,
17 having ownership of it. They've threatened to call the
18 note if anything else happens.

19 Q. Okay. And as I understand it, the foreclosure
20 proceeding that BRELF had initiated against you has been
21 stopped because of your payment?

22 A. Partially. They are still if -- it's been,
23 you know, suspended, but they are still willing to file
24 foreclosure on the property if I have no ownership of
25 the property.

1 Q. Is it your understanding that if Dalio is
2 allowed to go forward with the foreclosure then BRELF
3 will reactivate or reinstitute its foreclosure of the
4 property at the same time?

5 MR. PENNELL: Objection, hearsay.

6 THE COURT: Overruled. You can answer
7 what you believe they're going to do.

8 THE WITNESS: Yes.

9 MR. JUNELL: Pass the witness.

10 THE COURT: Cross?

11 CROSS-EXAMINATION

12 BY MR. PENNELL:

13 Q. Mr. Polk, if I understood your testimony --
14 let me back up. You're an experienced commercial real
15 estate investor, correct?

16 A. I wouldn't say -- to somewhat, yes.

17 Q. How many other commercial properties have you
18 bought or sold?

19 A. About three.

20 Q. Three other properties?

21 A. Correct.

22 Q. What are those other properties?

23 A. I have property in New Jersey. I have
24 property downtown Houston, and commercial property in
25 the Grove area, Groves, Texas.

1 Q. The property downtown Houston, what is that
2 address?

3 A. It's 917 Main Street.

4 Q. And then what was the other one in Texas?

5 A. It's just land. It's commercial land.

6 Q. Okay. And those are the only three properties
7 you've bought or sold in your --

8 A. You're forgetting that property in New Jersey.
9 That's the third.

10 Q. Okay. So other than 917 main, the commercial
11 lot, it's undeveloped?

12 A. It's partially developed.

13 Q. Where is that?

14 A. In Groves, Texas.

15 Q. Grove?

16 A. Yes.

17 Q. Like Grove Enterprises?

18 A. Correct.

19 Q. Okay. And then the property in New Jersey.
20 You have never done any other commercial real estate
21 deals; is that correct?

22 A. Correct.

23 Q. Okay. But you have bought and sold commercial
24 real estate before, correct?

25 A. Correct.

1 Q. And you know what an estoppel is, correct?

2 A. I didn't know what an estoppel was until this
3 transaction.

4 Q. Do you know what an estoppel is now?

5 A. Yes.

6 Q. An estoppel is what the tenant signs so that a
7 buyer has some confidence that the tenant is happy,
8 correct?

9 A. Correct.

10 Q. And if I understood your testimony, you signed
11 the contract, which is Grove -- I'm sorry Dalio
12 Exhibit 1, which is -- if you look at that binder in
13 front of you, it's Exhibit 1.

14 A. How is it labeled?

15 Q. It says --

16 A. Oh, yeah.

17 Q. So you signed that in November, correct?

18 A. Correct.

19 Q. And you testified that Zeke Agha was somebody
20 that you dealt with in terms of getting access to the
21 property, correct?

22 A. He was stating that he was the owner, correct.

23 Q. Okay. And you understood he was acting on
24 behalf of the owner, correct?

25 A. No.

1 Q. You did not understand that?

2 A. No. He presented himself as the owner.

3 Q. Okay. And you dealt with him as though he
4 represented the owner, correct?

5 A. As the owner.

6 Q. Okay. So -- but you dealt with him, correct?

7 A. Correct.

8 Q. And you met with him at the property, correct?

9 A. Correct.

10 Q. And you had a chance to inspect the property,
11 correct?

12 A. Correct.

13 Q. And you had a chance to talk to the tenants,
14 correct?

15 A. No.

16 Q. You did not have a chance to talk to the
17 tenants?

18 A. No.

19 Q. Did anybody tell you you couldn't talk to the
20 tenants?

21 A. Zeke.

22 Q. Zeke said you are not allowed to talk to the
23 tenants?

24 A. Yes.

25 Q. Okay. Did Zeke -- did you get tenant

1 estoppels?

2 A. We received some of them.

3 Q. You received some of them. And you knew you
4 did not have all of them when you went to closing,
5 correct?

6 A. That's correct.

7 Q. Okay. And you knew that Cunningham Lindsey
8 did not -- had not given you an estoppel, correct?

9 A. Can I explain?

10 Q. I'm sorry?

11 A. Can I explain?

12 Q. No. I just want yes or no if you knew that
13 Cunningham Lindsey had not given you an estoppel,
14 correct?

15 **THE COURT:** Your counsel can come back
16 behind and give context to your answer. Just yes or no,
17 if you can.

18 **THE WITNESS:** Yes.

19 Q. (By Mr. Pennell) And you knew that Zander
20 Homes had not signed an estoppel, correct?

21 A. No.

22 Q. Let me -- flip to the back of the notebook.
23 There's an exhibit --

24 A. Which page?

25 Q. Go all the way to the back. Keep going. All

1 right. There should be a piece of paper in the back
2 pocket. Keep going. All right. Is there -- is there a
3 piece of paper in that pocket? All right. Now, that's
4 Dalio Exhibit No. 23.

5 All right. Now, Dalio Exhibit 23 is a
6 promissory note that you signed to Broadmark, which goes
7 by BRELF, correct?

8 A. Correct.

9 Q. All right. Now, if you flip to page 6 of 7,
10 do you see a signature there?

11 A. Correct.

12 Q. And that's your signature, right?

13 A. Yes.

14 Q. And if you look at page -- I'm sorry.

15 Paragraph 25, which is almost immediately above that, it
16 says, "Borrower has 21 days from funding date to collect
17 estoppels from the remaining four tenants: Cunningham
18 Lindsey, US, Zander Homes, Croy Homes, and Covenant
19 Global, or it is in immediate default trigger."

20 Did I read that correctly?

21 A. Correct.

22 Q. And you signed this on or about January 11th,
23 2019, correct?

24 A. Correct.

25 Q. Which was a week before you closed, correct?

1 A. Correct.

2 Q. So when you went to closing, you knew that you
3 did not have estoppels from these tenants, correct?

4 A. That's because they told me that the tenants
5 were out of town, and it was still during like the
6 holidays so, you know, they wouldn't be able to sign the
7 estoppels then, so that's why the lender put this
8 provision in the note.

9 **MR. PENNELL:** Objection, nonresponsive,
10 Judge.

11 **THE COURT:** Sustained. It needs to be
12 yes or no, and then your lawyer can follow up to give
13 context, if necessary.

14 Q. (By Mr. Pennell) So you knew that you did not
15 have estoppels from these four tenants, correct?

16 A. Correct.

17 Q. And you closed any way, correct?

18 A. Correct.

19 Q. So let me direct your attention back to
20 Exhibit 1, which is the contract. If you flip to
21 page -- it's going to be the fourth page. It's Section
22 7.

23 You bought the property as is, correct?
24 That's at the top of page 7, it has this "whereas."

25 A. That's the condition of the property.

1 Q. Yes. And so you knew you were buying it as
2 is. Nobody lied to you as to the condition of the
3 property, correct?

4 **MR. JUNELL:** Objection, form.

5 **THE COURT:** Overruled. You can answer.
6 Do you think anybody lied to you about the condition of
7 the property?

8 **THE WITNESS:** Well, when it comes to the
9 condition, are we speaking about the physical being of
10 the property?

11 Q. (By Mr. Pennell) Correct.

12 A. The physical and not the leases?

13 Q. I'm not talking about the leases. I'm just
14 talking about the sticks and bricks.

15 A. Correct.

16 Q. Okay. And so you had an opportunity to
17 inspect it, correct?

18 A. I did, correct.

19 Q. And you actually did go out and inspect it,
20 correct?

21 A. I did.

22 Q. Okay. And you've got pictures in your
23 appraisal that shows things about the property. Let's
24 look at page 164 of the appraisal. I'm sorry, not 164
25 page 64.

1 **THE COURT:** I think the evidence is is
2 that he knew that the building needed about \$360,000
3 worth of repairs at the time of the purchase.

4 **MR. PENNELL:** Correct.

5 Q. (By Mr. Pennell) Isn't that correct, Mr. Polk?

6 A. That is correct.

7 Q. Okay. And if you look at page 64, you see the
8 picture in the upper left and the bottom right?

9 A. Correct.

10 Q. And so do you see the temporary chillers that
11 are installed and then the tubes going from the bottom
12 to the top of the building?

13 A. Yes.

14 Q. And you knew when you closed that you were
15 going to have to fix that, right?

16 A. That's correct.

17 Q. You knew that was part of the value that you
18 were bringing was that Dalio didn't want to bother with
19 this and you were going to come in and make things
20 better, at least as far as the A/C was concerned,
21 correct?

22 A. Correct.

23 Q. And, now, you testified that you put several
24 thousand dollars into this deal, correct?

25 A. Correct.

1 Q. Did that money come out of your pocket or did
2 that money come from the first lienholder, Broadmark?

3 A. It was escrow.

4 Q. So is that coming from your pocket or coming
5 from the first lienholder?

6 A. I signed for the notes.

7 Q. Okay. But you didn't go out-of-pocket?

8 A. No.

9 Q. You borrowed that money, correct?

10 A. That's correct.

11 Q. And you knew you were going to have to borrow
12 that money when you closed?

13 A. Correct.

14 Q. Who is H. Capital Real Estate?

15 A. It's a broker.

16 Q. And does that company have any affiliation
17 with you?

18 A. They are a mortgage broker.

19 Q. So is that a yes or a no?

20 A. They are the mortgage broker that -- yes.

21 Q. So you're affiliated with them?

22 A. I'm not affiliated with them. They financed
23 the building. They found a lender for the property and
24 I know of them.

25 Q. Did you walk away from closing with a check?

1 A. The H Capital.

2 Q. No. Did you, Harold Polk, either through
3 Grove or individually or through a brokerage company,
4 did you leave closing with money?

5 A. You're talking about H Capital as a broker?

6 Q. I'm trying to figure out --

7 A. Yes, they did. They did.

8 Q. Okay. And do you have an interest in that
9 company?

10 A. No.

11 Q. So -- okay. So did you, Harold Polk, or Grove
12 or any company leave closing with a check?

13 A. The company did, yes.

14 Q. Which company?

15 A. The companies that are on the HUDD.

16 Q. I'm asking about companies that you own or
17 have an interest in or you personally. I'm just trying
18 to figure out if you got money out of closing.

19 A. Yes.

20 Q. How much money did you get out of closing?

21 A. I think it was like 200,000 or so. It's on
22 the HUDD.

23 Q. And did you put any money into closing?

24 A. Yes.

25 Q. Okay. How much did you personally -- I'm not

1 talking about money you borrowed. I'm talking about
2 money that came out of your pocket as opposed to signing
3 a note?

4 A. You're asking what I put into it?

5 Q. I'm asking how much money did Harold Polk --

6 **THE COURT:** Your capital investment.

7 **THE WITNESS:** Oh, my capital investment
8 was like a hundred and some thousand.

9 Q. (By Mr. Pennell) And so you ended up making
10 money at closing, correct?

11 A. Not making money, no.

12 Q. Well, if you put in a hundred and you walked
13 away with two hundred, you made money on the closing,
14 correct?

15 A. That was for the payments.

16 Q. That was for what?

17 A. That was for payments.

18 Q. What was? I'm not following you.

19 A. You're asking me for the money that came out
20 at closing. I said that was for payments that didn't go
21 into my pocket.

22 Q. Payments for what?

23 A. The property, mortgage payments.

24 Q. Okay.

25 A. Mortgage payments.

1 Q. I'll move on because I know we're running out
2 of time.

3 When you bought the property, did you
4 plan to replot it?

5 A. Yes.

6 Q. And did you plan to sell a portion of that to
7 a hotel developer?

8 A. Yes.

9 Q. And you were going to hopefully get about 4
10 million for that, right?

11 A. Correct.

12 Q. Okay. And so did you replot it?

13 A. I couldn't.

14 Q. Okay. So you could have but you didn't?

15 A. That's not correct.

16 Q. Okay. Let me ask the question this way: You
17 bought it intending to replot it, carve out a portion,
18 sell that to a hotel developer for 4 million, correct?

19 A. Correct.

20 Q. And that would have been money that you made
21 on the deal, correct?

22 A. Correct.

23 Q. Did you ever replot it?

24 A. It couldn't be replotted.

25 Q. No. Let me -- I'm sorry. I don't mean to

1 interrupt, but --

2 THE COURT: Take it in pieces. You
3 didn't replat it.

4 THE WITNESS: No.

5 Q. (By Mr. Pennell) Did you replat it?

6 A. No.

7 Q. Okay.

8 THE COURT: Why not?

9 THE WITNESS: Because City rules that
10 like for the parking for a hotel you have to have so
11 much space for a parking, and it wouldn't have been
12 allotted for having parking for the office space and the
13 hotel.

14 Q. (By Mr. Pennell) All right. So let me direct
15 your attention now to Exhibit 4, Dalio Exhibit 4. It's
16 in the white binder. All right.

17 Did you receive -- did you and Brad --
18 strike that. I understood from your testimony you and
19 Brad Parker communicated regularly about this deal,
20 correct?

21 A. Correct.

22 Q. And you understood Brad Parker was acting on
23 behalf of Jetal companies, correct?

24 A. Correct.

25 Q. And that they had some sort of relationship

1 with Dalio, the seller, correct?

2 A. Yes.

3 Q. Okay. And so if you look about two-thirds of
4 the way down on Exhibit 4, on January the 9th, 2019, at
5 4:12 p.m., do you see where I'm at?

6 A. January the 9th? I see January the 10th.

7 Q. Okay. Go down below that.

8 A. Oh, at the very bottom.

9 MR. PENNELL: May I approach, Judge?

10 THE COURT: Three lines down.

11 THE WITNESS: I see it. I see it.

12 Q. (By Mr. Pennell) Now underneath that it says,
13 "Thanks, Harold. We are working on the estoppels ahead
14 of receiving the closing documents. As discussed, we
15 won't be getting estoppels for Cunningham Lindsey,
16 parentheses, (ESI), closes parentheses, or Koasati given
17 they have vacated and are delinquent, period. Might
18 also have issues with Tucker Energy who is listed as MTM
19 or month-to-month on the rent roll."

20 Did I read that correctly?

21 A. Yes.

22 Q. Now, if I understood your testimony on direct,
23 you admitted that you got an e-mail from Brad Parker
24 shortly before closing, correct?

25 A. Correct.

1 Q. Is this that e-mail?

2 A. Yes.

3 MR. PENNELL: Judge, I move to offer
4 Exhibit -- Dalio Exhibit 4 into evidence.

5 MR. JUNELL: Objection, hearsay. There's
6 no one here that can prove it up. Brad Parker, the
7 Defendant in this case, is not here today.

8 THE COURT: Overruled. I'll admit it.

9 MR. PENNELL: Okay.

10 Q. (By Mr. Pennell) So as of January the 9th you
11 knew that you weren't going to be getting estoppels for
12 Cunningham Lindsey, Koasati, and that you might also
13 have issues with Tucker Energy, correct?

14 A. Correct.

15 Q. And then if we look at the promissory note
16 that you signed with Ralph earlier, there were -- you
17 also knew that you didn't have estoppels from Zander
18 Homes, Croy Homes or Covenant Global, correct?

19 A. Correct.

20 Q. So you're closing on a commercial building
21 without estoppels from one, two, three, four, five, six
22 tenants, if I'm counting correctly; is that correct?

23 A. I don't know what you're counting.

24 Q. All right. Well, I'll just list them out.
25 Cunningham Lindsey is one; Koasati is two; Tucker Energy

1 is three; Zander Homes is four; Croy Homes is five; and
2 Covenant Global is six.

3 A. Okay.

4 Q. So you knowingly closed on this building
5 without tenant estoppels from six of the tenants,
6 correct?

7 A. It wasn't presented that way.

8 Q. Okay. My question is: You closed on this
9 building, and at the time you closed, you knew you
10 didn't have estoppels from these six tenants, correct?

11 A. That's incorrect because the lender asked for
12 an e-mail and there was only four as to the promissory
13 note here. It only stated four.

14 Q. Okay.

15 A. And that's the only four that we were --

16 Q. But then in that Exhibit 4 there's two more.
17 So at a minimum you were missing four estoppels,
18 correct?

19 A. That's correct.

20 Q. Okay. But you thought you could make money on
21 the deal even knowing that these four tenants that are
22 listed in the note hadn't given you an estoppel?

23 A. Provided that the rent rolls that they sent
24 with the \$52,000 was correct. This was sent on the
25 9th after we had went through approval and the

1 appraisals that were ordered by the lender. And then
2 the rent roll was just sent out on January the 9th -- I
3 mean, the 7th, prior to this e-mail. This e-mail is a
4 chain from we were speaking about closing docs, and then
5 this was sent in that, those closing docs.

6 **MR. PENNELL:** Judge, I'm going to object
7 as nonresponsive.

8 **THE COURT:** Sustained. Next question.

9 Q. (By Mr. Pennell) Now, the deed was signed
10 January the -- strike that.

11 Let me direct your attention to
12 Exhibit 7. You gave Dalio a Deed of Trust on 411,
13 correct?

14 A. Yes.

15 Q. All right. And you also gave Dalio deeds of
16 trust on two other properties one was 929 Kirby Drive.

17 **MR. JUNELL:** What exhibit are you looking
18 at?

19 **THE COURT:** 7.

20 **MR. PENNELL:** Well, Exhibit 7 and then
21 also Exhibits 19 and 20.

22 **THE COURT:** Okay.

23 **MR. PENNELL:** I'm sorry. Exhibit 18 and
24 19, I'm sorry. So Exhibits 7, 18 and 19.

25 **THE COURT:** Okay.

1 Q. (By Mr. Pennell) Those are deeds of trust on
2 411 North Belt, Kirby Law Office, which is Main Street,
3 and 929 Kirby Drive, correct?

4 A. Correct.

5 Q. And you signed a three-and-a-half million
6 dollar note to Dalio, correct?

7 A. Correct.

8 Q. And that's Exhibit 8. Look at Exhibit 8. I
9 know it's a lot of flipping around.

10 A. And what page is that?

11 Q. It's Exhibit 8. Just find the 8 tab. And
12 Exhibit 8 is a note that you signed, correct?

13 A. Correct.

14 Q. And it's in three -- the amount is
15 approximately 3.5 million, correct?

16 A. But it doesn't have a date on here.

17 Q. Yeah, but if you look at the last page where
18 it's signed, it's notarized on January the 18th, 2019,
19 on the last page.

20 Do you see that?

21 A. This is January.

22 Q. Look at the top of the last page. We're under
23 "Acknowledgments, State of Texas, County of Harris, on
24 this, the --" 17th is crossed out, and it says 18th.

25 A. Correct.

1 Q. Okay. So Exhibit 8 is Dalio's promissory note
2 for 3.5 million. And is that your signature on the
3 proceeding page?

4 A. Yes.

5 Q. Okay. And so this note was secured by three
6 properties, 929 Kirby, 917 Main and 411 North Belt,
7 correct?

8 A. Correct.

9 Q. Now, if you look at Exhibit 20 -- well, strike
10 that.

11 Did you own 917 Main Street at that time?

12 A. Yes.

13 Q. And was that loan -- was that property secured
14 by a loan?

15 A. Correct.

16 Q. Deed of trust?

17 A. Yes.

18 Q. And was that loan in default?

19 A. Not at the time. Ali knew about all of the
20 dealings, even with the 929. I was working with the
21 lender on trying to get those properties either
22 refinanced or inject more capital. That's why I did
23 this deal.

24 **MR. PENNELL:** Objection, nonresponsive.

25 **THE COURT:** Overruled. Next question.

1 Q. (By Mr. Pennell) So your testimony is that the
2 Main Street property and the Kirby Street property you
3 owned both of those on January the 18th when you signed
4 the promissory note?

5 A. Yes.

6 Q. And your testimony is you owned both of them
7 when you signed the deeds of trust?

8 A. In January, yes.

9 Q. Okay. So let me direct you now to Exhibit 21,
10 Dalio Exhibit 21. I want to direct you to the last
11 page, actually the next to the last page where it says,
12 "Exhibit A." And the last line on that page it says,
13 "Property address is commonly known as 929 Kirby Drive,
14 Houston, Texas, 77019."

15 A. Which page is that?

16 Q. It's on the next to the last page of Exhibit
17 21.

18 A. Uh-huh.

19 Q. It says, "Exhibit A," at the top.

20 **MR. JUNELL:** What's the title of the
21 document you're looking at?

22 **MR. PENNELL:** It's "Substitute Trustee's
23 Deed," Dalio Exhibit 21.

24 **THE WITNESS:** This was on January the
25 19th?

1 Q. (By Mr. Pennell) That's when it was recorded.
2 Correct.

3 A. January the 10th.

4 Q. Yeah. So right now I'm just trying to show
5 you where it says, "929 Kirby Drive," on the page.

6 MR. PENNELL: Can I approach, Judge?

7 THE COURT: Yes.

8 Q. (By Mr. Pennell) All right. Right there. All
9 right. So I'm looking at page Exhibit A of Dalio
10 Exhibit 21, the last line of Exhibit A. Can you read
11 that?

12 A. "Property address is commonly known as 929
13 Kirby Drive."

14 Q. Okay. And if you flip back to the first page,
15 it's a Substitute Trustee's Deed, correct?

16 A. Correct.

17 Q. And so if you look on the top of page 2, it
18 says that there was an auction on January the 2nd, 2019.
19 It's the third line from the top of page 2.

20 Do you see that?

21 A. Yes.

22 Q. Okay. And so if you look down, there's
23 language of conveyance where the trustee conveys 929
24 Kirby to the winning auction vender. Do you understand
25 that?

1 A. Yes.

2 Q. Okay. And so the date of the auction was
3 January 2nd. We talked about that. The date of this
4 deed is January the 10th, 2019.

5 Do you see that?

6 A. Yes.

7 Q. And you signed the deeds of trust on January
8 the 18th, correct?

9 A. Yes.

10 Q. So at the time you signed the deed of trust
11 for 929 Kirby you didn't even own it; is that correct?

12 A. That's not correct because the lender was
13 still working with me on this deal, and they were
14 waiting for me to get payment to them on this deal.

15 Q. Do you own 929 Kirby now?

16 A. No.

17 Q. Okay. Because it's been foreclosed?

18 A. Correct.

19 Q. Okay. And that was one of the pieces of
20 collateral for the loan?

21 A. Correct.

22 Q. And then if you look at Dalio Exhibit 22 --
23 and I'm going to streamline this a little just because
24 we're running short on time.

25 Dalio Exhibit 22 is a Foreclosure Sale

1 Deed for the Kirby loft, which is the property at 917
2 Main.

3 A. Correct.

4 Q. And do you own 917 Main anymore?

5 A. I still do.

6 Q. You own 917 Main?

7 A. Yes.

8 Q. Even though there's a foreclosure sale deed
9 here?

10 A. Yes. I do have -- I just refinanced 917 Main,
11 the basement. But the second floor, the lender is
12 actually allowing me to pay that off.

13 Q. So it was foreclosed and then you reacquired
14 it?

15 A. Correct.

16 Q. How much have you paid Dalio on the 3.5
17 million?

18 A. Zero. Can I explain?

19 Q. No.

20 **THE COURT:** Your lawyer can address that
21 if he wants to.

22 **MR. PENNELL:** Give me just a second,
23 Judge. Let me flip through here and make sure I'm not
24 forgetting anything.

25 Q. (By Mr. Pennell) Oh, yeah. Let me direct your

1 attention back to Exhibit 1, the Dalio Exhibit 1. Did
2 you read this contract before you signed it?

3 Actually, you know what? You don't even
4 need to look at it. I'll just point it out to the Judge
5 later.

6 Did you read the contract before you
7 signed it?

8 A. Yes.

9 Q. Did you understand it?

10 A. Not all of it in its entirety.

11 Q. Is it your position in this lawsuit that
12 because you didn't understand it in its entirety that
13 you're not bound by it?

14 A. Not correct.

15 Q. Okay. So you understand you're bound by this
16 even if you didn't completely understand it?

17 A. Correct.

18 Q. And is it your understanding that if you
19 close, you waive your claims because you closed instead
20 of terminating the contract and moving on to the next
21 deal?

22 Do you understand that?

23 **MR. JUNELL:** Objection, calls for a legal
24 conclusion.

25 **MR. PENNELL:** We can look at the

1 contract, if we need to, Judge.

2 **THE COURT:** Overruled. You can state
3 your understanding of how things work.

4 **THE WITNESS:** To my understanding on the
5 transaction that I was buying a property in the
6 condition it was in as far as the A/Cs, not the leases
7 that's in the contract, states transfer over as well and
8 its entirety.

9 Q. (By Mr. Pennell) Okay. And the contract gives
10 you the right to demand estoppels, correct?

11 A. Correct.

12 Q. And you closed knowing that at least four of
13 six tenants who left did not sign estoppels. We covered
14 that, right?

15 A. Can I explain that?

16 **THE COURT:** Your lawyer can address that.

17 **MR. PENNELL:** Just answer the question.

18 **THE WITNESS:** Yes.

19 Q. (By Mr. Pennell) Okay. And so -- okay. Did
20 you notify Dalio that you didn't think they were
21 entitled to foreclosure before you filed this lawsuit?

22 A. Yes.

23 Q. Did you demand mediation?

24 A. I tried to meet with Ali.

25 **MR. PENNELL:** I'm going to object as

1 nonresponsive.

2 Q. (By Mr. Pennell) You understand that in the --

3 MR. PENNELL: Did you rule on that
4 objection, Judge? I didn't hear if you did.

5 THE COURT: I'm sorry. I missed it.

6 MR. PENNELL: I objected to his answer as
7 nonresponsive.

8 THE COURT: Sustained. Sorry.

9 Q. (By Mr. Pennell) So you understand that the
10 contract requires that you mediate before you file suit?
11 Do you understand that?

12 A. That's if no fraud was committed.

13 Q. So is that -- that's a yes if no fraud was
14 committed?

15 A. Correct.

16 Q. Okay. So your position is because there's
17 fraud you don't have to abide by the contract?

18 A. I tried to meet with Ali, and --

19 THE COURT: Just answer that question.

20 THE WITNESS: Correct.

21 THE COURT: Your lawyer -- okay. Thank
22 you. Your lawyer can come back and give context if he
23 wants to.

24 Q. (By Mr. Pennell) Now, I didn't see any
25 documents that your attorney brought of these

1 communications with you and Ali Choudhri. Do you know
2 if you brought copies of those?

3 A. I tried to meet in person.

4 THE COURT: Did you bring copies?

5 THE WITNESS: Copies of me --

6 THE COURT: Of those, what, e-mails?

7 Q. (By Mr. Pennell) I don't know. However you
8 communicated with Mr. Choudhri, did you bring copies of
9 that?

10 A. I have it in my phone where I tried to meet
11 with him and we were texting.

12 MR. JUNELL: There are not exhibits to
13 that.

14 MR. PENNELL: Okay. That's -- that's all
15 I needed to know.

16 Q. (By Mr. Pennell) Did you understand this was a
17 distressed asset when you bought it?

18 A. What the A/Cs? Yes.

19 Q. And you understood that you're going to have
20 to invest some money and do some work to get it up and
21 going?

22 A. Correct.

23 Q. Did you ever complain to the first lienholder
24 that they were treating you unfairly and that they were
25 inhibiting your ability to turn the property around?

1 A. When we first closed and the insurance --

2 **THE WITNESS:** Can I answer that question,
3 Your Honor?

4 **THE COURT:** Yeah.

5 **THE WITNESS:** When we first closed on the
6 property, the insurance company did not send in an
7 invoice to the title company, and the insurance was not
8 paid on the property. So, therefore, the lenders were
9 kind of forced the property into default because there
10 was no insurance because the insurance wasn't collected
11 on the property.

12 And when they did that, they required
13 that I put insurance on the property immediately and
14 make that payment. When I didn't make that payment,
15 they -- before I made the payment, they were trying to
16 get me to sign off the rents in a lock box and I felt
17 that that would hinder my ability to properly bring an
18 asset into good standing because if I had no rents I
19 wouldn't be able to pay the management company nor the
20 ongoing expense in trying to revamp the property in the
21 interim. So I felt that they were trying to constrain
22 me then, and that's the only reason why I stated that.

23 Q. (By Mr. Pennell) Okay. So let me direct your
24 attention to Dalio Exhibit 20. All right. Is this a
25 true and correct copy of that e-mail that you were just

1 testifying about?

2 A. Correct.

3 **MR. PENNELL:** Okay. Judge, move to admit
4 Dalio 20 into evidence.

5 **MR. JUNELL:** Objection, hearsay.

6 **THE COURT:** Overruled. 20 is admitted
7 into evidence.

8 Q. (By Mr. Pennell) All right. So in this
9 document you claimed to Broadmark about their
10 interfering in your relationship with your tenants,
11 correct?

12 A. Yes.

13 Q. And you tell them that because that they're
14 not releasing funds for you to fix up -- fix the HVAC,
15 you're in danger of losing the building, correct?

16 A. That wasn't the funds for the HVAC. This
17 e-mail communication was in reference to the -- the
18 e-mail that was sent out because of the insurance issue.
19 But, yes, this is -- this is the e-mail I sent out,
20 correct.

21 **MR. PENNELL:** Okay. I'm going to object
22 to that answer as nonresponsive.

23 **THE COURT:** Overruled.

24 Q. (By Mr. Pennell) Okay. So if you look on page
25 2 of Exhibit 20 at the top, the paragraph -- the first

1 line is "Hope you are not a loan to own shop."

2 Do you see that?

3 A. Correct.

4 Q. And then the last sentence of that paragraph,
5 "Thus far, the second lienholder has been very
6 accommodating and fair and you failing to release funds
7 for HVAC and delays could cause a domino effect," and
8 put you in default with them.

9 Did I read that correctly?

10 THE COURT: Did he read that correctly?
11 That's the question.

12 THE WITNESS: Correct.

13 Q. (By Mr. Pennell) Okay. And so the first
14 lienholder was holding money from the HVAC from you and
15 you were unhappy about it, correct?

16 A. Correct.

17 Q. And when you bought this property, you didn't
18 have your own funds. You were going to borrow the money
19 from Broadmark to fix the HVAC, correct?

20 A. The money was the escrow, correct.

21 Q. Okay. So you -- but you didn't have your own
22 money. This was coming from the first lender, correct?

23 A. Incorrect.

24 Q. When you said it was put into escrow --

25 A. You just said I didn't have my own money. I

1 did have my own money.

2 Q. To fix up the HVAC.

3 A. The money was escrowed through the loan
4 prefaces.

5 Q. So you put that money in. That money didn't
6 come from Broadmark.

7 A. That money was set aside in escrow.

8 Q. You personally put that money in. That money
9 is not part of the Broadmark loan.

10 A. That was part of the loan.

11 Q. That was part of the loan?

12 A. Correct.

13 Q. Okay. Thank you.

14 And then you also say you can't develop
15 the replat and do that, and that was part of your plan
16 to resell the property?

17 A. Correct.

18 Q. And so when you bought it, you were planning
19 to sell part of it to the hotel developer. Why didn't
20 you research to see if this would be a suitable tract
21 for a hotel?

22 A. Because the building had its own parking
23 garage and the land that was there was -- seemed
24 adequate at the time.

25 Q. Okay. But why -- why didn't you dig deeper

1 and make sure before I commit to this, I need to make
2 sure that I can carve this whatever -- replat it and
3 sell it -- sell part of it to the hotel?

4 A. I received a short answer on the
5 redevelopment. But once the surveyor got to going in
6 with The City, they wouldn't allow it.

7 Q. But what's a survey cost, like 5,000?

8 A. Yes.

9 Q. And you couldn't have surveyed it beforehand
10 and figured that out before you committed to this?

11 A. It takes at least three months to resurvey a
12 property.

13 Q. Okay. So you signed the contract in November.
14 You were in such a hurry to close -- was this important
15 to you being able to sell part of it to the hotel?

16 A. Yes.

17 Q. Okay. And so it was important to you but it
18 wasn't so important that you would actually do your due
19 diligence on the front end and make sure you could do
20 this before you actually closed; is that correct?

21 A. I did receive an answer, a short answer, that
22 stated that it possibly could be done.

23 Q. From whom?

24 A. A surveyor, a property surveyor.

25 Q. So you got a short answer from a property

1 surveyor that said, "Yes", and you got a long answer
2 after you closed that said, "No"?

3 A. Correct, because they were under the
4 impression that part of the footage on the service road
5 where the grassy area is could be utilized as parking as
6 well and it can't. It has easements on it.

7 MR. PENNELL: Object as nonresponsive to
8 everything after "No".

9 THE COURT: Overruled.

10 Q. (By Mr. Pennell) Now, if I understood your
11 testimony on direct, the property is losing
12 approximately, what, 20 something thousand per month?

13 A. No. It's actually about 30 to 40 from what
14 the rent roll stated.

15 Q. Okay. So what's it cost to service Broadmark?

16 A. 46,000.

17 Q. And you're getting approximately 20,000 in
18 rent?

19 THE COURT: 26, I think he said.

20 Q. (By Mr. Pennell) 26,000 in rent?

21 A. 20, 20,000 in rent.

22 Q. Okay. 20,000 in rent.

23 A. 26 would be if you subtracted 20 from the 46.

24 Q. So every month you're going into -- you're
25 short \$20,000, correct?

1 A. A little bit over 20.

2 Q. Do you have the money to turn this thing
3 around?

4 A. Yes.

5 Q. Where is that money going to come from?

6 A. Myself personally.

7 Q. Do you have enough assets to turn this thing
8 around?

9 A. Yes.

10 Q. Why haven't you done this before now?

11 A. What do you mean? I've been in the process of
12 turning the asset around. It's just I've gotten into a
13 financial restraint with the property and I had to pull
14 moneys out of another asset to take care of this.

15 Q. So if I understood your testimony on direct --
16 strike that. So if you have all this -- these assets
17 available, you could pay a bond of \$50,000, correct?

18 A. No.

19 Q. So you have assets available to refurbish the
20 building but you don't have the money to post a \$50,000
21 bond?

22 A. That's because the moneys have to go to pay
23 for the building. If I was to pay a bond, that would
24 hinder my financial wherewith all to put the moneys back
25 into the building.

1 Q. Do you admit that you owe Dalio money?

2 MR. JUNELL: Objection, calls for a legal
3 conclusion on the status of the claims of the lawsuit.

4 THE COURT: Overruled. You can tell him
5 what you think your position is.

6 THE WITNESS: No, I don't.

7 Q. (By Mr. Pennell) And that's because you think
8 they defrauded you?

9 A. Correct.

10 Q. So you get to keep the property. You get to
11 walk away from your note Scott free. That's what you
12 think should happen in this case.

13 MR. JUNELL: Objection, assumes facts not
14 in evidence.

15 THE COURT: Stop. Stop.

16 MR. JUNELL: Objection, assumes facts not
17 in evidence.

18 THE COURT: You can answer. Overruled.
19 You can answer.

20 THE WITNESS: I still have a \$4.8 million
21 note.

22 Q. (By Mr. Pennell) To Broadmark?

23 A. Correct.

24 Q. But you bought the property from Dalio?

25 A. Correct.

1 Q. And you haven't paid them a penny?

2 A. Correct.

3 Q. And the property presumably has some value or
4 you wouldn't want it anymore?

5 A. Provided that the rent rolls were correct.

6 Q. Okay. But the property still has value now
7 because you still want it, correct?

8 A. I would like to keep an asset I put money
9 into, correct.

10 Q. Okay. So the property still has value now
11 because if you didn't, you would be willing to walk
12 away, correct?

13 A. I am willing to rescind the deal.

14 MR. PENNELL: Objection, nonresponsive.

15 THE COURT: Overruled.

16 Q. (By Mr. Pennell) So --

17 THE COURT: You're arguing with him right
18 now.

19 MR. PENNELL: Fair enough. I get it,
20 Judge.

21 THE COURT: And he's not required to
22 negotiate under oath.

23 MR. PENNELL: I understand.

24 THE COURT: I think this -- I think this
25 carcass is picked clean.

1 MR. PENNELL: I think you're probably
2 right, Judge.

3 THE COURT: That's not a comment on the
4 weight of the evidence.

5 MR. PENNELL: No. I understand. I
6 understand. You got the point.

7 THE COURT: Yes, sir. We've been going
8 an hour and ten minutes.

9 MR. PENNELL: Yeah, I understand, Judge.
10 Before I pass, I just need to make sure I covered
11 everything.

12 THE COURT: Your lawyer is going to have
13 some redirect probably.

14 Q. (By Mr. Pennell) Oh, Mr. Polk, is your address
15 3117 Seventh Street, Port Arthur, Texas, 77642?

16 A. No.

17 Q. Has that ever been your address?

18 A. It was the address previously.

19 Q. Have you ever given notice of your new
20 address?

21 A. I haven't.

22 Q. What is your new address?

23 A. It's -- I use the 917 Main Street or the 411
24 for business purposes.

25 Q. Is there a suite on 917 Main Street?

1 A. Yes.

2 Q. What's the suite?

3 A. It's B-1.

4 Q. B, Bravo 1?

5 A. Correct.

6 Q. Did -- you testified about the security
7 deposits. Did Dalio -- was there -- were there any
8 discussions with Dalio about that?

9 A. Yes.

10 Q. And what were those discussions?

11 A. They said that they didn't have them.

12 Q. Dalio said they didn't have them?

13 A. Correct.

14 MR. PENNELL: Judge, I'll pass the
15 witness.

16 THE COURT: Redirect?

17 MR. JUNELL: Briefly.

18 REDIRECT EXAMINATION

19 BY MR. JUNELL:

20 Q. Dalio got money on this sale, didn't they?

21 A. Correct.

22 Q. And when he says that you never paid Dalio
23 anything, Dalio walked away from this deal with \$5
24 million in their pocket, correct?

25 A. It was about 4.5 million.

1 Q. Okay. And that was paid from the first
2 lienholder?

3 A. Correct.

4 Q. Broadmark?

5 A. Correct.

6 Q. And they paid that money via wire transfer or
7 otherwise to Dalio?

8 A. Correct.

9 Q. So Dalio got out of this transaction with
10 four-and-a-half million dollars or more in cash?

11 A. Correct.

12 Q. Correct?

13 A. Yes.

14 Q. And a promissory note from you?

15 A. Correct.

16 Q. For another couple of million dollars?

17 A. That's correct.

18 Q. The only other thing I want to talk to you
19 about --

20 THE COURT: I thought it was 3.5.

21 MR. JUNELL: Well, it's 3.5, but two of
22 it was related to the purchase of this building.

23 THE COURT: Okay.

24 Q. (By Mr. Junell) And the other debt came from
25 another -- another transaction, correct?

1 A. It was like 1.5 on this one and the 2 million
2 is from another transaction.

3 **THE COURT:** Okay.

4 Q. (By Mr. Junell) That Ali Choudhri just
5 combined into one promissory note?

6 A. Correct.

7 Q. That didn't have anything to do with this
8 transaction?

9 A. No.

10 Q. Okay. So you don't owe Dalio \$3.5 million for
11 the purposes of just this 411 building?

12 A. No, I didn't.

13 Q. Okay. The estoppels, he asked you about why
14 you would engage in a transaction when you were missing
15 some tenant estoppels. Explain the circumstances of
16 what -- what you were being told and why those estoppels
17 were not there?

18 A. I was told by Brad that some of the -- the
19 tenants, the ones that weren't able to provide
20 estoppels, was still out because, you know, the December
21 and then January, the new year, and they wouldn't be
22 able to provide estoppels, so that's why the lender made
23 it a condition in the note to provide those estoppels
24 within 21 days. And then after that, I received an
25 e-mail from Zeke stating that he gave me a copy of the

1 check from Croy Homes and Zander Homes stating that they
2 had paid their rents.

3 Q. Okay. And so in the week prior to the
4 closing, like the date of January 7th, the date that
5 Brad Parker sent you this updated rent roll, did you
6 believe at that time that you were going to be getting
7 estoppels from all these tenants that were on that list?

8 A. Yes.

9 Q. Did they ever tell you on January 7th, when
10 they sent this updated rent roll, that there were
11 tenants who you were never going to get estoppels from?

12 A. No.

13 Q. And ultimately on January 9th, Brad sent you a
14 quick little e-mail that says that Cunningham Lindsey is
15 not going to have an estoppel, right?

16 A. Correct.

17 Q. And because they've left the premises and
18 they're delinquent -- did he tell you when they left?

19 A. No.

20 Q. Did he tell you that they'd already been out
21 for seven months?

22 A. No.

23 Q. Did he tell you that they'd already sued?

24 A. No.

25 Q. Did he tell you how delinquent they were,

1 that, in fact, they owed \$600,000 on their lease?

2 A. No.

3 Q. Were there any numbers at all discussed with
4 any of these tenants?

5 A. No.

6 Q. Okay. And do you know whether or not
7 Brad Parker ever notified the lender, Broadmark, that
8 these tenants had vacated the building and that they
9 weren't going to give these estoppels?

10 A. No, he didn't.

11 Q. Do you know whether or not Brad Parker or
12 anyone at Dalio ever notified the appraiser that the
13 appraisal might be changed because of these tenants
14 couldn't deliver these estoppels?

15 A. No.

16 MR. JUNELL: Pass the witness.

17 THE COURT: Cross?

18 MR. PENNELL: Nothing further, Judge.

19 THE COURT: All right. You may step
20 down, Mr. Polk. Call your next witness.

21 MR. JUNELL: Plaintiff rests.

22 THE COURT: All right.

23 DEFENDANT'S MOTION FOR DIRECTED VERDICT

24 MR. PENNELL: Judge, I want to move for a
25 directed verdict on the issue of unclean hands. He

1 submitted collateral for the \$3.5 million note of 929
2 Kirby, and the evidence is that he did not own that
3 property at the time he signed the deed of trust. So
4 he -- if he's fudging collateral that he doesn't own, he
5 may have a claim for money damages, but he's certainly
6 not entitled to injunctive relief because he's got
7 unclean hands.

8 **MR. JUNELL:** He testified that he was in
9 the process of trying to refinance that. I don't know
10 how you move for directed verdict on unclean hands
11 anyway or what the intent was. That goes to the weight,
12 not credibility. But he definitely was working with
13 them and he testified and the evidence was presented
14 that he was attempting to refinance the property during
15 that time period.

16 **THE COURT:** Yeah, Motion for directed
17 Verdict is denied. Call your first witness.

18 **MR. PENNELL:** Azeemeh Zaheer. Oh, okay.
19 Dylan McGrath. Let me see if I can get him on the
20 phone.

21 **THE COURT:** Need a break?

22 **MR. PENNELL:** Yes, please.

23 **THE COURT:** Yes, let's take a break. How
24 long do you need, 15 minutes?

25 (Off the record, break taken)

1 **THE COURT:** Let's go back on the record.
2 I'm giving the nonmovant 30 minutes to put on their
3 case-in-chief. I'm asking you to waive your cross for
4 now to give them the maximum time to put their evidence
5 on. If I feel like I need more from you, I may ask you
6 to ask some questions.

7 **MR. JUNELL:** I'm going to try to limit it
8 really short.

9 **THE COURT:** Yeah, right. Keep it short.
10 Go ahead. State who you're calling. Call your first
11 witness.

12 **MR. PENNELL:** Dalio calls Azeemeh Zaheer
13 and we're trying to get her on the screen with volume so
14 that everybody can hear her.

15 **THE COURT:** Yeah, all we need to do is
16 hear her more than anything else.

17 **MR. PENNELL:** Sure, understood. But it
18 would be better if you could see her as well.

19 Azeemeh, can you hear us?

20 **THE COURT:** I can see her.

21 **MR. PENNELL:** Hi, Azeemeh. Can you hear
22 us?

23 **MS. ZAHEER:** Yeah, I can hear you.

24 **MR. PENNELL:** Okay. Can everybody hear
25 her?

1 THE COURT: Yep. I need you to raise
2 your right hand.

3 (Witness is duly sworn)

4 THE COURT: All right. Proceed.

5 MS AZEEMEH ZAHEER,

6 having been first duly sworn, testifies as follows:

7 DIRECT EXAMINATION

8 BY MR. PENNELL:

9 Q. All right. Would you state your name.

10 A. Azeemeh Zaheer.

11 Q. What is your relationship with Dalio?

12 A. I am the chief executive.

13 Q. And could you briefly summarize your
14 educational background?

15 A. Sure. I have -- went to school at University
16 of St. Thomas and then I have a finance degree from MIT,
17 real estate finance, and a Harvard real estate
18 development qualification as well.

19 Q. And can you summarize your professional
20 background?

21 A. I worked in investment banking for over
22 20 years. I live in London, and I specialize in real
23 estate investment banking. I have done over 3 billion
24 worth of transactions, and I have a very strong subject
25 matter expertise in real estate. I teach real estate

1 finance to women in Saudi Arabia and other female led
2 education programs.

3 Q. Okay. And did Dalio ever own the building at
4 411 North Belt?

5 A. Yes.

6 Q. And can you describe 411 North Belt in terms
7 of what the building was like, if the tenants were
8 happy, unhappy, that sort of thing?

9 A. Well, I had Mirza Agha, Zeke. He managed the
10 property and he was there on a day-to-day basis. He had
11 very strong, good relationship with the tenants. Some
12 of them came to visit with me periodically. There were
13 a lot of issues with the building that we were dealing
14 with, and we had told Mr. Polk about that. But the --
15 the building was a value-added transaction. It wasn't
16 something that you would take and hold on to income for.
17 That was sort of the risk.

18 I have met Mr. Polk as well. I think
19 that was a lie in the beginning. He came to my office
20 at Westheimer with Zeke and he was with somebody else,
21 and we had a conversation before in January.

22 Q. Okay. And you've mentioned Zeke a couple
23 times. Was Zeke authorized to represent Dalio in
24 connection with this transaction?

25 A. Yes, of course, because I travel a lot and I

1 am not often in Texas, so I have to have somebody on the
2 ground there.

3 Q. Okay. And who is Jetall?

4 A. Jetall is a company that I have asked to help
5 me with all of the dealings with the -- with the sale.
6 They had property managed the building prior. They had
7 found Mr. Polk and brought him to do the deal with us,
8 so they were involved, and we instructed them to be
9 involved.

10 They were -- Jetall previously was
11 represented by Paul Simon. I am a bit surprised to see
12 him there because his wife also manages the property so
13 I'm wondering what that --

14 MR. JUNELL: Objection, nonresponsive.

15 THE COURT: Sustained. Need you to just
16 answer the question yes or no and then -- or describe as
17 deemed fit and then move on.

18 Q. (By Mr. Pennell) And so is it unusual for a
19 property manager to help the owner sell the building?

20 A. No.

21 Q. And why is that?

22 A. Because they know the building inside out.
23 They -- they have been exposed to the building for many
24 years, and they would have a greater understanding of
25 everything that's happening there. So it's not unusual.

1 Q. And so the fact that Brad Parker was
2 communicating with Harold Polk, was he authorized to do
3 that on behalf of Dalio?

4 A. Yes, he was.

5 Q. Okay. I'm sorry. Were you done?

6 A. No. No. That's it.

7 Q. Okay. Now, you said something earlier about a
8 value-added. What does "value-added" mean?

9 A. So there's four different ways you acquire
10 real estate. And they keep on talking about the
11 appraisal and the rent, but the rent is innocuous
12 because if the rent was, you know, fully in sort of
13 place, it would have been worth the 9.4 million, which
14 the appraiser had put in. The appraiser had based the
15 9.4 million on an income sales approach. When you look
16 at an income sales approach that means that it's based
17 on rental income.

18 The 7.5 was based on a value-add
19 strategy. It was not based on the tenancies of the
20 lease. So you would take into account sort of, you
21 know, the current income. But whenever you look at
22 these things, you have to get your lawyer to look at all
23 the leases because there's many different types of
24 leases, modified gross leases, triple net leases, double
25 net leases, and that basically tells you what the risk

1 profile is for each of the tenants.

2 So we have never acquired a building
3 where we will underwrite on income without going through
4 due diligence on each of the leases with our buyers. So
5 the appraisal was based not on an income sales approach,
6 which is clear. It is written quite evidently. It was
7 based on a value-add strategy, which is what the 7.5
8 represented. In the appraisal as well, it said that the
9 larger tenant, Tucker, was on a month-to-month lease and
10 that the Capex that would be required to change this
11 building around would fall -- the onus would fall on the
12 new owner.

13 Q. So the value-add sale is when the buyer comes
14 in and puts in basically sweat and equity to improve the
15 value of the building by rolling up their sleeve?

16 A. That's absolutely correct. If Mr. Polk were
17 to have bought this building, considering the income,
18 the purchase price would have been a lot higher than the
19 7.5.

20 Q. Okay. And so was the sale supposed to be as
21 is?

22 A. Absolutely. So the PSA was signed in
23 November 2018. The deal actually wasn't closed until
24 the end of January 2019. And the PSA specifically
25 states as is where is.

1 So, I mean, in that, too, he was supposed
2 to give us over 300,000, and this is really all
3 upsetting because that was -- that was supposed to be
4 rolled up, given to us, but we actually allowed him to
5 keep that so he could do the value-add strategy and have
6 been super accommodating to help him through the
7 process. So he actually got this building for free.
8 He's been using other people's money, including ours and
9 the senior bank, to kind of sort of fix it up.

10 **MR. JUNELL:** Objection, nonresponsive.

11 **THE COURT:** Overruled.

12 **THE WITNESS:** We did not receive any
13 cash. The money that was given out was paid -- paid off
14 the via a lien to Icon Bank. The rest was sort of
15 given, rolled up to Mr. Polk to do his value-add
16 strategy, which he was quite confident he could turn
17 around for millions with the sale of the hotel.

18 Q. And so, if I understood correctly, Dalio did
19 not walk away from closing with money. All the money
20 that went to, quote, unquote, "Dalio," actually went to
21 pay off the debt on the building?

22 A. That's correct.

23 Q. So how much has Dalio received from Mr. Polk
24 for this building?

25 A. Nothing. Absolutely nothing.

1 Q. Thank you. And so the only thing Dalio got
2 for the building was a note for 3.5 million, correct?

3 A. That's correct.

4 Q. And was the note secured?

5 A. Yes.

6 Q. By what?

7 A. By the collateral he's put in, which I have
8 come to understand that is largely not valid. So we are
9 in a very unsafe position.

10 Q. And so there was the 411 North Belt, which the
11 first lender has posted for foreclosure, 929 Kirby and
12 917 Main Street. Do you know what happened to 929 Kirby
13 and 917 Main?

14 A. No.

15 Q. Okay. Did Dalio receive an equity pledge from
16 Mr. Polk as part of this deal?

17 A. He had pledged to pay back -- he signed a
18 promissory note to pay back --

19 Q. So let me do it this way. I'm going to hold
20 this document up to the camera. I'm hoping you can see
21 it. This is Dalio Exhibit 17. Can you see that?

22 A. Yes.

23 Q. And what is Dalio Exhibit 17?

24 A. Equity Pledge and Assignment Agreement.

25 Q. Okay. And so in this document --

1 **THE COURT:** What's the exhibit number?

2 **MR. PENNELL:** Dalio 17.

3 **THE COURT:** Thank you.

4 Q. (By Mr. Pennell) Is this a true and correct
5 copy of the equity pledge?

6 A. Yes.

7 **MR. PENNELL:** Judge, I offer Exhibit 17
8 into evidence.

9 **MR. JUNELL:** She hasn't proved anything
10 up. She just read the title on it. It's hearsay.

11 **THE COURT:** It's admitted.

12 **THE WITNESS:** It's not hearsay.

13 **MR. PENNELL:** It's okay. It's okay.
14 It's been admitted.

15 Q. (By Mr. Pennell) So in this document Mr. Polk
16 pledges his ownership interest in the entities that own
17 those three buildings, correct?

18 A. Correct.

19 Q. Okay. And so is Grove Enterprises, slash,
20 Polk, are they in default under the promissory note?

21 A. They are.

22 Q. And have they paid anything under the
23 promissory note?

24 A. No.

25 Q. Had Dalio known that Mr. Polk did not own any

1 of the three properties that were pledged as collateral,
2 would it have closed and accepted those properties as
3 collateral?

4 MR. JUNELL: Objection, assumes facts not
5 in evidence.

6 THE COURT: Overruled.

7 MR. PENNELL: I'm sorry?

8 THE WITNESS: No. No, we wouldn't have.

9 Q. (By Mr. Pennell) And what happens if the first
10 lienholder forecloses?

11 A. If the first lien forecloses, then the equity
12 gets wiped out, which is -- and we have a possibility of
13 getting wiped out completely as well, so...

14 MR. PENNELL: Okay. Pass the witness.

15 THE COURT: Cross?

16 MR. JUNELL: Yes.

17 MR. PENNELL: Hang on. Should I turn the
18 laptop so she can see Mr. Junell as he's questioning
19 her?

20 THE COURT: Sure. Do it.

21 THE WITNESS: It's 2:00 a.m. here, so...

22 MR. JUNELL: Can you hear me if I talk
23 right here?

24 THE WITNESS: I can hear you perfectly
25 fine. Thank you.

1 MR. JUNELL: Okay.

2 CROSS-EXAMINATION

3 BY MR. JUNELL:

4 Q. What was your involvement in the transaction?

5 A. I am the CO of Dalio. I assigned Mirza Agha
6 to act on my behalf.

7 Q. Did you play any part at all in the sale of
8 this building?

9 A. Yes, I had to approve it.

10 Q. You approved what?

11 A. I approved the sale of the building. I
12 understood the terms. I completely was aware that Brad
13 sent an e-mail, which I asked him to fully disclose all
14 of the issues with the tenants, which he did.

15 Q. Did you instruct Mr. Parker to send the
16 financial statements and the rent rolls?

17 A. I instructed him to provide all the
18 information.

19 Q. What information?

20 A. Pardon?

21 Q. What information did you instruct Mr. Parker
22 to send?

23 A. I instructed Brad to send anything that
24 Mr. Polk needed for the closing or for the -- for the
25 loan.

1 Q. Did you instruct Mr. Parker to send a rent
2 roll in January of 2019?

3 A. I instructed Mr. Parker to disclose all the
4 information with the rent roll.

5 Q. Okay. Did you instruct Mr. Parker to only
6 include tenants that were actually in the building?

7 A. No. Brad told the true and correct picture of
8 the tenants in the building.

9 Q. Oh. So is it your position that Mr. Parker
10 gave accurate information to Broadmark and accurate
11 information to the appraiser when he turned over the
12 rent rolls?

13 A. I believe that Brad gave information that had
14 our tenants in there with some -- we had some, you know,
15 provisions in place, and he completely disclosed. I
16 mean, I was speaking with Zeke. Harold knew everything
17 in there.

18 Q. Let me rephrase the question. Is it your
19 position that Brad Parker gave accurate information to
20 Broadmark and to the appraiser regarding the tenants
21 that were in the building?

22 A. You know what? It's 2:00 a.m. I don't recall
23 to hand what the exact conversation was or what was
24 given because I am abroad. But I know that we
25 instructed all of the information to be given and it was

1 properly given. He was -- he was aware that these
2 tenants were not there. He visited the building.

3 Q. Okay. But you've -- you've seen the rent roll
4 that Mr. Parker provided, correct?

5 A. I've seen it, yes.

6 Q. Okay. Are you aware that there are six
7 tenants on that rent roll that are no longer in the
8 building?

9 A. Mr. Polk was aware as well. Yes, we provided
10 that information.

11 Q. Mr. Polk's already testified.

12 MR. PENNELL: Judge, can the witness
13 finish her answer?

14 THE COURT: Well, she needs to answer yes
15 or no and then stop.

16 Q. (By Mr. Junell) Okay. Are you aware that the
17 income statements that were provided showed income of
18 the property at being around 50 or \$60,000 per month?

19 A. I don't recall that.

20 Q. Okay. You're -- is it your testimony to this
21 court that in December of 2018, in the month before this
22 building was sold to Harold Polk and Grove Enterprises,
23 that the rent on the building was 50 or \$60,000 per
24 month?

25 A. We had a pro forma. I'm not sure of the exact

1 number of the rent that was put in. I don't do the
2 accounting.

3 Q. You would agree with me that the income
4 statement and the pro forma that was turned over to the
5 appraiser and to Broadmark was incorrect?

6 A. The -- the -- the building was sold as is
7 where is. I'm not sure of what was correct or was not
8 correct. But you have to do your own projections. I'm
9 not there to do Mr. Polk's projections.

10 Q. Is it -- is it your belief --

11 A. No. I actually -- whatever was provided to
12 him was a pro forma and pro forma has projections, so...

13 Q. Is it your belief that because a building is
14 sold as is where is that allows a seller to disclose
15 false information?

16 A. We did not disclose false information and, of
17 course, I don't.

18 Q. Okay. Well, in fact, you did disclose false
19 information. Mr. Parker disclosed false information to
20 the lender and to the appraiser on January 7th. Do you
21 agree with that?

22 MR. PENNELL: Objection, argumentative.

23 THE WITNESS: No.

24 THE COURT: Overruled.

25 THE WITNESS: Do you know what a pro

1 forma is on real estate? Do you know what that means?

2 **MR. JUNELL:** Excuse me. I'm sorry?

3 **THE WITNESS:** Do you know what a pro
4 forma is?

5 **MR. JUNELL:** Sure.

6 **THE WITNESS:** A pro forma is projections.
7 It's not a true and accurate description of anything.

8 Q. (By Mr. Junell) But you provided more than a
9 pro forma. You also provided income statements for 2017
10 and 2018, correct?

11 A. Okay. I have to look at the -- what was
12 provided.

13 Q. Okay. And you said that Dalio didn't receive
14 any money on this transaction. How much was the debt to
15 Icon?

16 A. It was four-and-a-half million.

17 Q. Okay. And so you were able to use all that
18 money to extinguish a liability that belonged to Dalio,
19 correct?

20 A. It was debt on the building, so he just
21 exchanged debt for debt.

22 Q. Well, it was debt on the building that
23 Dalio -- was on Dalio's balance sheet, correct?

24 A. That's correct.

25 Q. So you did receive money. You received

1 four-and-a-half million dollars that allowed you to
2 extinguish a debt that was being held by Dalio?

3 A. We would be quite happy to keep the debt and
4 send it on. I mean, we didn't have to sell this
5 building to Mr. Polk. The money -- we did not receive
6 money. Icon Bank received the money.

7 Q. Well, you may not have received the actual
8 cash, but you received the money that was sent -- went
9 to Icon Bank on your behalf to extinguish a debt that
10 you owed Icon Bank, correct?

11 A. So he agreed to pay 7.5, and that's what he
12 paid, and that money was used to buy -- was to pay the
13 debt, yes.

14 Q. Did any money -- did any money at all, even a
15 dollar, go to Ali Choudhri or Jetall?

16 A. No.

17 Q. Okay.

18 A. Not to my -- not to the best of my knowledge.

19 Q. So is your testimony is today that
20 Mr. Choudhri and Jetall received zero dollars as a
21 result of this transaction?

22 A. As far as I'm aware, yes. I have no idea if
23 they received money or not.

24 Q. Okay. And Zeke, who we talked about earlier,
25 the person who's the agent, he's actually your father,

1 isn't he?

2 A. Yes, he is.

3 Q. And did you ever date Mr. Choudhri?

4 MR. PENNELL: Objection, Judge.

5 Q. (By Mr. Junell) Do you have a relationship
6 with him?

7 THE COURT: Overruled.

8 THE WITNESS: What kind of question is
9 that? What relevance does my personal life have
10 anything to do --

11 THE COURT: Overruled. She doesn't have
12 to answer that.

13 THE WITNESS: -- with the bloody loan. I
14 mean, it's completely -- it's inappropriate.

15 MR. PENNELL: So, Judge, you said she
16 does not have to answer.

17 THE COURT: Yeah, she doesn't have to
18 answer. Let's focus on the issue.

19 THE WITNESS: Would you ask a man these
20 questions?

21 MR. JUNELL: It's okay. You don't have
22 to answer the question. We've already determined that.

23 Q. (By Mr. Junell) If -- does Dalio own any other
24 properties right now?

25 MR. PENNELL: Judge, I'm going to object

1 on relevance grounds. We're not here on other
2 properties.

3 **THE COURT:** Yeah, sustained.

4 Q. (By Mr. Junell) Why were you asking
5 Brad Parker, who's an employee of another company, to do
6 anything with regard to this transaction?

7 A. The same reason why I would ask Hines or Boxer
8 to do anything. They're property managers.

9 Do you know the difference between a
10 property manager and an asset manager? They have
11 completely different functions.

12 Q. (By Mr. Junell) Was Jetall a property manager
13 of this building?

14 A. I used to manage the property for many years.

15 Q. In January 2019, were they a property manager
16 for this building?

17 A. Yeah, they were managing the property.

18 Q. Okay. So you actually -- Dalio paid Jetall
19 money to manage the property in January of 2019?

20 A. No. There is -- there is consideration. We
21 paid Kandra (phonetic) Paul's wife.

22 Q. Okay. And my question is is why the rent
23 rolls and the leases and all the information came from
24 Brad Parker and not from you at Dalio?

25 **MR. PENNELL:** Objection, asked and

1 answered.

2 THE COURT: Sustained.

3 MR. JUNELL: Pass the witness.

4 THE COURT: Redirect?

5 MR. PENNELL: Just one question on
6 redirect.

7 REDIRECT EXAMINATION

8 BY MR. PENNELL:

9 Q. Ms. Zaheer, there were questions about Zeke.
10 Where is Zeke right now?

11 A. He lives in Malaysia.

12 Q. And do you know what the time difference is
13 between Malaysia and Houston?

14 A. It's actually completely the opposite. So
15 it's like 12 hours, I think.

16 MR. PENNELL: Nothing further.

17 THE COURT: All right. Anything else?

18 MR. JUNELL: Nothing, Your Honor.

19 THE COURT: Next witness.

20 MR. PENNELL: Let me see if I can get
21 Bill McGrath on the phone, Judge.

22 THE COURT: Where is he?

23 MR. PENNELL: Well, he was here and then
24 he had another engagement.

25 THE COURT: Where did he go?

1 MR. PENNELL: So I'm going to try and
2 call him right now.

3 THE COURT: Okay.

4 MR. JUNELL: Your Honor --

5 THE COURT: You have eight minutes. I'll
6 give you some leeway if we get him on the line.

7 MR. JUNELL: This guy who he's asking
8 about now wasn't involved at all during the real estate
9 sale and can't testify about any of the representation.

10 THE COURT: Let's see if we can get him.

11 MR. PENNELL: No, he's not answering.
12 So, Judge...

13 THE COURT: Any other witnesses?

14 MR. PENNELL: No other witnesses, and let
15 me move to adjourn until tomorrow morning, so I can
16 hopefully get him because he was here earlier, but, you
17 know, there were other matters and so he couldn't stay
18 all day.

19 THE COURT: Why don't you do a summary of
20 what you anticipate his testimony would be.

21 MR. PENNELL: Offer of proof. He would
22 testify that -- he was the property manager for
23 Mr. Polk. He would testify that Mr. Polk took all the
24 money out. He never paid any of the bills, including
25 Mr. McGrath. He didn't pay any of the expenses for

1 maintaining the property. All he did was basically suck
2 the property -- suck all the money out and then leave
3 the tenants unhappy. That's the summary of his
4 testimony.

5 **THE COURT:** While Mr. Polk was the owner?

6 **MR. PENNELL:** Correct.

7 **THE COURT:** Okay.

8 **MR. JUNELL:** We would also bring forth
9 those two guys are in a lawsuit against each other right
10 now, a separate matter. They're adverse to each other
11 in a separate lawsuit. He was the property manager who
12 has since filed a lawsuit against Harold over amounts
13 that he claims are owed, so -- and he did not work at
14 the company or the building at the time of the sale. So
15 regarding the fraud and the representations and all that
16 sort of stuff, he can't --

17 **THE COURT:** That's all post-transaction
18 work. Is that right?

19 **MR. PENNELL:** Correct. It's all
20 post-transaction, but it will still be relevant on what
21 Mr. Polk was doing with the assets, if he's just
22 bleeding the building dry or if he's actually putting
23 money into it because if I understood his testimony, all
24 the money to fix it up came from the lender. And then
25 if he's getting money that's on top of what he's

1 testified to and he's just taking it out, that would go
2 to the unclean hands argument and everything else.

3 **THE COURT:** But he did pour half a
4 million into the property, right?

5 **MR. PENNELL:** Well, but that money came
6 from the first lender.

7 **THE COURT:** Yeah, I understand that.

8 **MR. PENNELL:** So -- and so just so the
9 record's clear, let me say it's 8:00 o'clock.

10 **THE COURT:** That's part of the loan.

11 **MR. PENNELL:** Correct. Now, let me just
12 say it's 8:00 o'clock p.m. I want to move to adjourn
13 this hearing until tomorrow morning so I can hopefully
14 present Mr. McGrath's testimony live.

15 **MR. JUNELL:** We would object to that. We
16 need to finish this up now.

17 **THE COURT:** Yeah, any other witnesses
18 that you would otherwise call?

19 **MR. PENNELL:** No, Judge.

20 **THE COURT:** Okay. I'm going to deny that
21 motion, and I am going to -- I'm going to grant the TRO
22 but on this condition, and I want to share this
23 condition with y'all so that we can work on appropriate
24 language. Okay. In this second to the last paragraph
25 it says, "Are enjoined from taking any other action with

1 regard to --" and now it goes over to the last
2 page "-- any foreclosure of the property, including
3 posting the property or foreclosure on any future date,
4 unless the court orders otherwise," and I want to add
5 this language --

6 **MR. JUNELL:** Before you could say that,
7 is this the order that was filed today, the proposed
8 temporary injunction order?

9 **THE COURT:** Yes.

10 **MR. JUNELL:** It was filed today. It's
11 slightly amended from the one that was filed two weeks
12 ago.

13 **THE COURT:** I'm pretty sure it's the one
14 today. No. Let me double check, just a second. 9/30,
15 yeah, it's the one that was filed today.

16 **MR. JUNELL:** Okay. Good.

17 **THE COURT:** What I want to add to that
18 line there -- you see where I am, the second to the last
19 paragraph, "Unless the court orders otherwise," you see
20 that?

21 **MR. PENNELL:** Bear with me one second.

22 **THE COURT:** I want to add this language,
23 "Provided the first lien note held by BRELF remains
24 current. Should the first lien, slash, note go into
25 default and the first lienholder posts the property for

1 foreclosure, Defendants may petition the court to modify
2 this injunction." The only problem I have with that is
3 Mr. Simon's statement that, you know, they're reserving
4 to foreclosure tomorrow.

5 MR. SIMON: I actually just texted them.
6 Are we off the record?

7 MR. PENNELL: No, I want this on the
8 record, Judge.

9 THE COURT: Well, I mean, sure. That's
10 fine.

11 MR. SIMON: I just texted him to let them
12 know that, and I was waiting to hear what the conditions
13 were going to be so I could let them know that --

14 THE COURT: Which is basically that
15 they're not going to foreclosure.

16 MR. SIMON: Correct.

17 THE COURT: Right? But once they post
18 and express that intention of foreclosing, then you can
19 come in here and say, "Judge, I'm about to lose my
20 equity," and seek modification of the injunction.

21 MR. PENNELL: But if they've already said
22 they can foreclosure tomorrow -- and I know they said
23 they won't if we're not allowed to foreclosure -- but
24 they've already posted, and then now they have this
25 letter that they said earlier was binding and now

1 they're saying apparently it's not.

2 **THE COURT:** Well, that's what I'm --
3 that's what I'm concerned about. That's why I'm
4 bringing this language to your attention because I don't
5 want to grant this --

6 **MR. JUNELL:** We can get him on the line
7 right now, and he'll tell you what's --

8 **MR. SIMON:** I think there's a simple work
9 around.

10 **THE COURT:** I mean, I could -- I could --
11 I mean, I could take that -- well, I mean, if I take
12 that language out and they foreclosure tomorrow, right,
13 and they kill your equity, I don't want that to happen.

14 **MR. PENNELL:** But they're not a party.

15 **MR. SIMON:** He just texted me. Thank
16 you. He is not going to foreclose. That's what he just
17 e-mailed me, excuse me, not text.

18 **THE COURT:** I guess this is called the
19 little bit of trust, but, I mean --

20 **MR. JUNELL:** Well, if they do, they can
21 run back down here and we can fix it and undo it.

22 **MR. PENNELL:** I don't know that I agree
23 with that. But, Judge, can I ask what the bond is going
24 to be for the temporary injunction?

25 **THE COURT:** I'm just going to keep it

1 what it is, so that we don't have to --

2 **MR. PENNELL:** \$1,000 bond on a
3 three-and-a-half million note that's fully matured?

4 **THE COURT:** Yep. And the parties are
5 ordered to mediate this case by October 20th, 2019, with
6 a mediator of their choosing.

7 **MR. JUNELL:** By what date? October 20th?

8 **THE COURT:** It's so ordered. October
9 20th, right.

10 **MR. PENNELL:** Is the thousand dollar
11 bond, that's the one they posted for the TRO. That acts
12 as the bond for the temporary injunction?

13 **THE COURT:** Yes.

14 **MR. PENNELL:** Okay. So they don't have
15 to post a separate bond?

16 **THE COURT:** Right. That way it's
17 effective immediately. If we had time to post more
18 bond, I'd consider that, but this way this is in effect.

19 **MR. PENNELL:** And is the temporary
20 injunction going to go through the time of trial or is
21 it just for one month?

22 **THE COURT:** I'm not going to put a
23 limitation on it because that will give the parties
24 incentive to mediate and see where things are. Because,
25 I mean, if things go south, eventually the first

1 lienholder is going to post. That's what's going to
2 start happening. I mean, the note is going to go in
3 default. The first note's going to go into default.
4 And once that's happened, I think that's your green
5 light to say, Judge, things have changed. They're in
6 default. I'm being threatened by losing my equity. You
7 got to let me go foreclose. And if that's what's going
8 down, then I would probably let you do that.

9 **MR. PENNELL:** Understood. But if we
10 foreclosure at the same time as the first lienholder,
11 then the effect is the same. I mean, it might as well
12 be as if you kept the injunction in place because we're
13 going to be wiped out either way. This is the only way
14 we have of possibly preserving our equity.

15 **THE COURT:** I understand. And, you know,
16 but they put on prima facia case that Mr. Polk was
17 misled into the transaction. And if he prevails, you
18 know, then he has legal remedies, but he needs to keep
19 his ownership position to minimize his losses. You
20 know, this is just a bad deal that went bad. And y'all
21 need to work with each other to try to make it better,
22 if you can. I wish I could fix all problems.

23 **MR. PENNELL:** The deadline to mediate
24 was?

25 **THE COURT:** October 20th.

1 **MR. JUNELL:** So is this -- is this an
2 order that you're going to sign right now that we could
3 get a copy of? I think I'm going to have to go down to
4 the trustee sale tomorrow just to make sure that whoever
5 the substitute trustee is doesn't go forward.

6 **MR. PENNELL:** And, Judge, just so you
7 know, you had signed an order at the last -- last time
8 we were down here. It never made its way on to the
9 clerk's website. It was an order denying the motion for
10 protective order as to BRELf. You denied it without
11 prejudice and you signed it, but it never appeared on
12 the clerk's website.

13 **THE COURT:** Let me see what I can find?
14 (Off the record)
15 (Whereupon, the proceedings were
16 concluded.)

1 THE STATE OF TEXAS)
2 COUNTY OF HARRIS)

I, Amanda L. King, Official Court Reporter in
and for the 189th District Court of Harris County, State
of Texas, do hereby certify that the above and foregoing
contains a true and correct transcription of all
portions of evidence and other proceedings requested in
writing by counsel for the parties to be included in
this volume of the Reporter's Record, in the
above-styled and numbered cause, all of which occurred
in open court or in chambers and were reported by me.

12 I FURTHER CERTIFY that this Reporter's Record
13 of the proceedings truly and correctly reflects the
14 exhibits, if any, admitted by the respective parties.

15 I FURTHER CERTIFY that the total cost for the
16 preparation of this Reporter's Record is \$1,530.50 and
17 was paid/ **will be paid** by Defendant.

18 WITNESS MY OFFICIAL HAND this, the 13th day
19 of July, 2020.

20 /s/ Amanda L. King
21 Amanda L. King, Texas CSR 6618
22 Expiration Date: 07/31/2021
23 Official Court Reporter
24 189th District Court
Harris County, Texas
201 Caroline, 12th Floor
Houston, Texas 77002
(832)927-2329.
amanda_king@justex.net

CAUSE NO. 201961734

GROVE ENTERPRISES, LLC
Plaintiff

vs.

DALIO HOLDINGS I, LLC
Defendant

v.

HAROLD GIBSON POLK, JR.
Third-Party Defendant

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§

IN THE COUNTY CIVIL

COURT AT LAW NO. 1

HARRIS COUNTY, TEXAS

Plaintiff's Request to Inspect Original Documents

Plaintiff Grove Enterprises, LLC, and Third Party Defendant Harold Polk (“collectively “Movants”) served their request to inspect original documents and would show the Court as follows:

Defendant DALIO is countersuing Movants for \$3,520,206.70 pursuant to a purported promissory note signed by the Movants. Attached is a copy of the alleged promissory note that Defendants have filed in trial court’s records as “*Dalio Exh. 8*” and other real property public records.

Based on information and belief, DALIO, through its owner/agent(s) Azeemeh Zaheer, Mirza Agha, Zeke Agha, and/or Brad Parker have forged the promissory note and caused to be introduced into evidence fake evidence.

Specifically, the purported promissory is six (6) pages with the first page and signatory/notary pages unnumbered. Specifically the first page is as follows:



The second through fourth pages show a specific page number as follows:

- 2 -



.....

- 3 -



.....

- 4 -

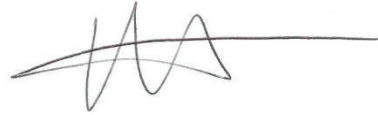


Notably, the footer from the first page, **“HF 8179114v.2”** is missing from the remaining five (5) pages.

Lastly, the signature page purportedly containing the Movants’ signatures has a vast space that could have included the notary affirmation. However, the notary affirmation and seal is on the last page. These are the hallmarks of a forged document and phony evidence.

Regardless, Movants would respectfully request that Defendants be ordered to produce all original documents for Movants to inspect at a neutral location and other just and equitable relief the Court deems proper.


Respectfully submitted,

A handwritten signature in black ink, appearing to be 'David Tang', written over a horizontal line.

David Tang, Esq.
State Bar No. 24014483
6711 Stella Link, #343
West University Place, Texas 77005
(832) 287-2129
(832) 217-3227 – Fax
Email: dtangattorney@gmail.com
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing was served in accordance with the Texas Rules of Civil Procedure on all parties/counsel of record by placing same in the United States mail, certified mail, return receipt requested, by hand delivery or by telecopier, on July 19, 2020.

A handwritten signature in dark ink, consisting of a series of loops and a long horizontal stroke extending to the right.

DAVID TANG

PROMISSORY NOTE

\$3,520,206.70

Houston, Texas

(Date)

FOR VALUE RECEIVED, HAROLD GIBSON POLK, JR. ("Polk"), an individual with an address at 917 Main Street, Houston, Texas 77002, and **GROVE ENTERPRISES, LLC ("Grove")**, a Texas limited liability company with an address of 3117 7th Street, Port Arthur, Texas 77642, jointly and severally as makers **"Borrowers"**, hereby unconditionally promise to pay to the order of **Dalio Holdings I, LLC**, a Delaware limited liability company, having an address at 3139 W Holcombe Blvd #845, Houston, TX 77025 ("Lender"), or at such other place as the holder hereof may from time to time designate in writing, the maximum principal sum of **THREE MILLION FIVE HUNDRED TWENTY THOUSAND TWO HUNDRED and SIX AND 70/100 DOLLARS (\$3,520,206.70)** in lawful money of the United States of America with interest thereon to be computed from the date of this Note at the Applicable Interest Rate, and to be paid in accordance with the terms of this Note, the 411 Deed of Trust, the 917 Deed of Trust and the 929 Deed of Trust (the "Deeds of Trust"), dated as of the date hereof, between Borrowers and Lender (the "Loan Agreement"). All capitalized terms not defined herein shall have the meanings set forth in the Pledge Agreement or the Deeds of Trust, as the case may be. This Note, the Pledge Agreement and the Deeds of Trust are sometimes collectively referred to as the "Loan Documents" or singly as "Loan Document."

ARTICLE 1 - Payment Terms

Borrowers agree to pay the principal sum of this Note, together with all accrued and unpaid interest thereon, all at the stated regular rate of fifteen percent (15.00%) per annum (the "Applicable Rate") on or before July 15, 2019 (the "Maturity Date"). Commencing February 15, 2019 and continuing on the 15th of each subsequent month until the Maturity Date, Borrower agrees to pay to Lender interest-only payments based on the principal sum of this Note and the Applicable Rate.

Upon any prepayment or repayment (including in connection with an acceleration of the Loan), made on or before the stated Maturity Date, Borrowers shall pay to Lender on the date of such prepayment or repayment (or an acceleration of the Loan) the Spread Maintenance Premium applicable thereto. All Spread Maintenance Premium payments hereunder shall be deemed to be earned by Lender upon the funding of the loan which is the subject of this Note. The "Spread Maintenance Premium" means, with respect to any prepayment of principal (or acceleration of the Loan) on or before the stated Maturity Date (and, for the avoidance of doubt, a repayment on the stated Maturity Date shall also require the payment of Spread Maintenance Premium) an amount equal to the product of the following: (A) the amount of such repayment (or the amount of principal so accelerated), multiplied by (B) the Spread, multiplied by (C) a fraction (expressed as a percentage) having a numerator equal to the number of months' difference between the date such prepayment occurs) or the next succeeding payment date through which interest has been paid by Borrowers, and a denominator equal to twelve (12); provided, however, that the Spread Maintenance Premium shall be waived, but only if Borrowers tender the full amount due and owing hereunder on or before March 31, 2019.

If Borrowers fail to pay the amount stated in the preceding paragraph, together with all accrued and unpaid interest thereon on or before the Maturity Date, Borrower shall pay to Lender additional interest at the Default Rate of the lesser of eighteen percent (18.00%) per annum (the "Default Rate") or the maximum amount allowed by the laws for the State of New York.

ARTICLE 2 - Default And Acceleration

The Debt shall without notice become immediately due and payable at the option of Lender if any payment of principal or interest required in this Note is not paid on or prior to the date when due or if not paid on the Maturity Date or on the happening of any other Event of Default and in addition, Lender shall be entitled to receive interest on the entire unpaid principal sum at the Default Rate pursuant to the terms of the Loan Agreement. This Article 2, however, shall not be construed as an agreement or privilege to extend the date of the payment of the Debt, nor as a waiver of any other right or remedy accruing to Lender by reason of the occurrence of any Event of Default.

ARTICLE 3 - Loan Documents

This Note is secured by the Pledge Agreement and the Deeds of Trust. All of the terms, covenants and conditions contained in any other Loan Document are hereby made part of this Note to the same extent and with the same force as if they were fully set forth herein. In the event of a conflict or inconsistency between the terms of this Note and the Loan Agreement, the terms and provisions of the Loan Document which gives the Mezzanine the greatest protection or right shall govern.

ARTICLE 4 - Savings Clause

This Note and the other Loan Documents are subject to the express condition that at no time shall Borrowers be obligated or required to pay interest on the principal balance of the Loan at a rate which could subject Lender to either civil or criminal liability as a result of being in excess of the Maximum Legal Rate. If, by the terms of this Note or any other Loan Document, Borrowers are at any time required or obligated to pay interest on the principal balance due hereunder at a rate in excess of the Maximum Legal Rate, the Applicable Interest Rate or the Default Rate, as the case may be, shall be deemed to be immediately reduced to the Maximum Legal Rate and all previous payments in excess of the Maximum Legal Rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the sums due under the Loan, shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan until payment in full so that the rate or amount of interest on account of the Loan does not exceed the Maximum Legal Rate of interest from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

ARTICLE 5 - No Oral Change

This Note may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrowers or Lender, but only by

an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

ARTICLE 6 - Waivers

Borrowers and all others who may become liable for the payment of all or any part of the Debt do hereby severally waive presentment and demand for payment, notice of dishonor, notice of intent to accelerate, notice of acceleration, protest, notices of protest and/or of non-payment and any and all other notices of any kind except any such notice expressly required by this Note. No release of any security for the Debt or extension of time for payment of this Note or any installment hereof, and no alteration, amendment or waiver of any provision of this Note or any other Loan Documents made by agreement between Lender or any other Person shall release, modify, amend, waive, extend, change, discharge, terminate or affect the liability of Borrowers, and any other Person who may become liable for the payment of all or any part of the Debt, under this Note, the Loan Agreement or the other Loan Documents.

No notice to or demand on Borrowers shall be deemed to be a waiver of the obligation of Borrowers or of the right of Lender to take further action without further notice or demand as provided for in this Note, the Loan Agreement or the other Loan Documents. In the case of Grove, the agreements herein contained shall remain in force and be applicable, notwithstanding any changes in the members comprising Grove, and the term "Borrower" as used herein, shall include any alternate or successor limited liability company, but any predecessor limited liability company shall not thereby be released from any liability. (Nothing in the foregoing sentence shall be construed as a consent to, or a waiver of, any prohibition or restriction on transfers of interests in such partnership, corporation or limited liability company which may be set forth in any Loan Document.)

ARTICLE 7 - Transfer

Upon the transfer of this Note, Borrowers hereby waiving notice of any such transfer, Lender may deliver all the collateral mortgaged, granted, pledged or assigned pursuant to the Loan Documents, or any part thereof, to the transferee who shall thereupon become vested with all the rights herein or under applicable law given to Lender with respect thereto, and Lender shall thereafter forever be relieved and fully discharged from any liability or responsibility in the matter accruing from and after the date of the transfer; but Lender shall retain all rights hereby given to it with respect to any liabilities and the collateral not so transferred.

ARTICLE 8 - Governing Law

This Note shall be governed in accordance with the laws of the State of New York.

ARTICLE 9 - Notices

All notices or other written communications hereunder shall be delivered to the respective addresses for each such party shown hereinabove, unless the party to whom notice is directed has given notice that its address has changed and provided the party from whom notice

is given its new address. Any notice delivered to Polk but not separately delivered to Grove shall be deemed delivered to Grove upon delivery to Polk and vice versa.

ARTICLE 10 -

[Intentionally omitted.]

ARTICLE 11 - Liability

The obligations and liabilities of each Borrower hereunder shall be joint and several.

[NO FURTHER TEXT ON THIS PAGE]

A handwritten signature in black ink, consisting of a stylized 'P' followed by a horizontal line and a loop.

IN WITNESS WHEREOF, **Borrower** has duly executed this Note as of the day and year first above written.

BORROWER:

GROVE ENTERPRISES, LLC, a Texas
limited liability company

By:
Its Manager

By: 
Harold Gibson Polk, Jr.
Its Manager


HAROLD GIBSON POLK, JR., Individually

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

On this the ^{18th}~~17th~~ day of January 2019, before me, a Notary Public, personally appeared **HAROLD GIBSON POLK, JR.**, who acknowledged himself to be (i) an individual borrower, and (ii) the Manager of **GROVE ENTERPRISES, LLC**, a Texas limited liability company, the other of the **Borrowers herein**, and, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of **GROVE ENTERPRISES, LLC**, by himself as its Manager.

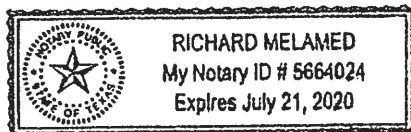
In witness whereof I hereunto set my hand and official seal.

Richard Melamed

NOTARY PUBLIC

Print Name: Richard Melamed

My Commission Expires: 7-21-20



[Handwritten signature]

1 IN THE UNITED STATES BANKRUPTCY COURT

2 FOR THE SOUTHERN DISTRICT OF TEXAS

3 HOUSTON DIVISION

4 IN RE: § CASE NO. 21-60082-11
5 GROVER ENTERPRISES, LLC, § HOUSTON, TEXAS
6 DEBTOR. § WEDNESDAY,
§ SEPTEMBER 22, 2021
§ 11:00 A.M. TO 11:47 A.M.

7 MOTION HEARING (VIA ZOOM)

8 BEFORE THE HONORABLE CHRISTOPHER M. LOPEZ
9 UNITED STATES BANKRUPTCY JUDGE

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12 APPEARANCES: SEE NEXT PAGE

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001863

1 HOUSTON, TEXAS; WEDNESDAY, SEPTEMBER 22, 2021; 11:00 A.M.

2 THE COURT: Okay. Good morning, everyone. This
3 is Judge Lopez. Today is September 22nd. I'm going to call
4 the 11:00 a.m. docket, and that is 21-60082 Grove
5 Enterprises, LLC. Here, originally, on a status conference
6 that was requested, but since then there was an emergency
7 motion to dismiss this case by Mr. Seth Kretzer, I believe
8 is the receiver.

9 So let me go ahead and just take appearances and
10 let's see -- is someone here on behalf of the Debtor?

11 MR. SINGH: Yes, Your Honor. Brendon Singh on
12 behalf of Grove Enterprises --

13 THE COURT: Okay.

14 MR. SINGH: -- in the bankruptcy case.

15 THE COURT: Good morning, sir.

16 I also ordered Mr. Michael Chang to be present for
17 today. Is Mr. Chang here, Michael Chang?

18 MR. SINGH: He is, Your Honor. Mr. Chang is here
19 on and on the line and on the video.

20 THE COURT: I see him. I see him on video. Good
21 morning, sir. Thank you for the -- thank you.

22 MR. CHANG: Thank you.

23 THE COURT: Okay.

24 Mr. Kretzer, I'll go ahead and take your
25 appearance.

1 MR. KRETZER: Good morning, Your Honor. Seth
2 Kretzer state court-appointed Receiver.

3 THE COURT: Okay.

4 And Mr. Ruff, good morning.

5 MR. VOLBERDING: And Your Honor, my name is James
6 Volberding. I am representing Mr. Kretzer. I'm his law
7 partner.

8 THE COURT: Ah, perfect. Good morning, sir.

9 MR. VOLBERDING: Thank you, sir.

10 THE COURT: Okay. Mr. Ruff, now I'll let you go.

11 MR. RUFF: Yeah. Good morning, Your Honor. Jason
12 Ruff on behalf of the U.S. Trustee.

13 THE COURT: Okay. Mr. Cornwell, do you wish to
14 make an appearance?

15 MR. CORNWELL: I do, Your Honor. Thank you. John
16 Cornwell on behalf of BRMK Lending, LLC. -- the most --

17 THE COURT: Mr. Cornwell, I know who you're
18 representing through the pleading, but I couldn't hear you
19 too clearly. Do you mind just stating it again? At least
20 to me it was breaking up on my end.

21 MR. CORNWELL: Of course, Your Honor. This is
22 John Cornwell, again, representing BRMK Lending, LLC. And
23 Your Honor, also on phone Sameer Karim, one of my litigation
24 colleagues that has had the fortune of being involved
25 through the history of this case. And on phone and by video

1 is another litigation colleague Aynsley Young all on behalf
2 of BRMK Lending.

3 THE COURT: Okay. Good morning.

4 Does anyone else wish to make an appearance this
5 morning in connection with this case?

6 MR. TANG: Your Honor, My name is David Tang. I
7 represent Harold Poke and Grove Enterprises in some state
8 district court actions. I'm their lawyer before this
9 purported and disputed assignment that they pulled out last
10 week to stop the foreclosure. So I'm trying to figure out
11 where I stand in all this, because we kind of joined in the
12 receiver's motion. I got a copy of the pleading -- the
13 complete pleading last night from everybody. I wasn't on
14 any emailing list. Not anybody's fault or anything it just
15 again just me didn't activate my bankruptcy account, again.

16 THE COURT: Yeah. No, no, no.

17 MR. TANG: -- my pace account.

18 THE COURT: Understood. And thank you. And to
19 the extent that there is somebody who wishes to make an
20 appearance today that would need to file a pro hoc, that is
21 waived today. You're free to appear today, this is an
22 emergency motion, and I just think what we're discussing is
23 really important. So there's no need to file anything or
24 have to worry about any of that today. Okay.

25 MR. TANG: Thank you -- I appreciate --

1 MR. SHEPHERD: Good morning.

2 THE COURT: Good morning, Mr. Shephard.

3 MR. SHEPHERD: Good morning, I'm Branch Shephard
4 and I represent -- in the state court litigation.

5 THE COURT: Did you say Daiyo (phonetic)?

6 MR. SHEPHERD: Yes, sir. Daiyo Holdings and --
7 Daiyo as a junior lien holder it's important to be around.

8 THE COURT: Okay. Good morning. Does anyone else
9 wish to make an appearance?

10 And for those that are on the line, there's no
11 need to hit five-star your line is completely unmuted, and I
12 hope to keep it that way just to let the parties speak. I
13 just ask everyone to please keep your phone on mute until
14 it's your turn to speak, so that way we can just minimize
15 background noise. So anyone else wish to make an appearance
16 and there's no need to hit five-star?

17 Okay. Mr. Singh, why don't you just talk to me
18 kind of about this case at the 10,000-foot level?

19 MR. SINGH: Happily, Your Honor.

20 THE COURT: Starting there and kind of where we
21 are and then I will turn to Mr. Volberding --

22 How do I pronounce your last name, sir? I want to
23 make sure I got it right. Is it Volberding? You're on
24 mute, sir. I muted you and I told you I -- sorry about
25 that.

1 MR. VOLBERDING: I apologize. Volberding, you did
2 it exactly right. Mr. V. is perfectly fine --

3 THE COURT: No, no, Volberding --

4 MR. VOLBERDING: -- that works just as well.

5 THE COURT: -- I just want to make sure I
6 pronounce it correctly. I'm going to be very respectful.
7 So thank you very much. So I'll turn to you next and then
8 I've got a couple of comments before we officially get
9 started, okay?

10 MR. VOLBERDING: Thank you, sir.

11 MR. SINGH: All right.

12 THE COURT: Mr. Singh, good morning.

13 MR. SINGH: Thank you, Your Honor.

14 So Your Honor, this is sort of -- I requested a
15 status conference and we took a little bit of time just so
16 we set the stage. When this case was filed it sort of had a
17 lot of tentacles to it and so we -- I was able to reach out
18 to Mr. Cornwell for the first lien hold in this case. I
19 actually got a chance to speak to Mr. Tang and Mr. Polk and
20 I reached out to their receiver a little bit later on but
21 wasn't able to get ahold of him at that time.

22 So here is sort of where this is. The main -- and
23 this has gone on for some time and the litigation has gone
24 on pretty far. The main issue, I think, we have before the
25 court and I had sort of extensive conversations with the USD

1 and I think everyone involved on whether authority to sort
2 of put the company into bankruptcy again. So here's sort of
3 when it's --

4 So the main documents that we have that are at
5 issue here are a couple loan agreements and one from 2017,
6 pledge of assignment of equity interest and a pledge of
7 assignment of equity interest in 2019. And before I go any
8 further, Mr. Tang and Mr. Polk -- just so I have -- the
9 Court understands where they are, they believe that all of
10 the documents including these documents and the documents
11 from the first lien holder, Mr. Cornwell's client, they --
12 allegations from their standpoint is that all of those
13 documents are fake and fraudulent, at least they weren't
14 supposed to be done to a certain extent. So just so that
15 when we're talking about them, that's their stance so the
16 Court understands where they're coming from.

17 The steps forward in the state court, lots of
18 things went on in the state court, and the second lien
19 holder on this -- property in 2019, let me back up a little
20 bit just so everyone is clear. 2019 there was a deal to
21 purchase 411 North Main which is sort of the property that's
22 at issue here. That property was originally supposed to be
23 bought -- the pleadings and the documents are somewhere
24 between I think the contract says \$7.5 million. That
25 contract was supposed to be funded by Mr. Cornwell's client

1 Broadmark or BMRK [sic] I just know them as Broadmark. BMRK
2 [sic] put in sort of approximately about \$408 million, Mr.
3 Polk was supposed to then put in \$305 million. Something
4 happened and a really large contention of what happened at
5 the title company in terms of documents being signed days
6 they were supposed to be signed.

7 But the best that I can sort of unravel is that
8 Mr. Polk signed some documents on January 11th, 2019. It
9 was supposed to fund the other half of the loan, that didn't
10 happen, the documents went back and forth over the next
11 week, and the deal eventually closed I think somewhere
12 around the 18th or the 17th and the confusion in the
13 documents are sort of just bad. Some of the documents --
14 the documents all had the 7th -- January 17th of 2019, and
15 some of them were marked out and then 18 was written in. So
16 the documents are sort of bad and that's sort of I think
17 where a lot of this comes about.

18 Along with those documents, is a pledge agreement
19 in '19 and there was a deal with Mr. Polk, an entity back in
20 2017, when he pledged all of his interest in Grove
21 Enterprises to two different companies, at the time, all
22 basically controlled by -- for today's hearing let's say Mr.
23 Chang's sort of in control of those. There's another
24 individual Ali Chandry (phonetic) who technically runs them,
25 but Mr. Chang is sort of the manager of those companies.

1 So what happened? After trying to foreclose and I
2 think the state court -- the state court appointed a
3 receiver to collect rent on these properties and they were
4 sort of kicking back and forth. And the state court didn't
5 really make a decision on whether the documents were
6 fraudulent or not, but the state court said it can go
7 foreclose. So both of these of properties -- both lien
8 holders, first and second, posted the property for
9 foreclosure and my clients ended up looking at getting
10 advice from corporate counsel on whether the -- whether they
11 can accept the pledge and assignment and what that would do.

12 From sort of 10,000-foot level the position is
13 that they accepted those pledges, both the '17 and the '19
14 on the basis that just out of abundance of caution, we're
15 going to accept the interest in both. They then became 100
16 percent interest holder in Grove Enterprises which then they
17 held a meeting and removed Mr. Polk and appointed Mr. Chang,
18 and then Mr. Chang put the company into bankruptcy.

19 THE COURT: So, Mr. Singh -- Mr. Singh, let me ask
20 you. Is there a governing security agreement that governs
21 when a pledge can be used or under what instances or do
22 these documents -- we're not talking evidence. I just want
23 to understand your position. So there was a default that
24 occurred and then, if I were then to look at the assignments
25 and the pledges, they would then indicate when someone could

1 use this as default? Or is there another document out there
2 that governs that? I just want to understand what it is
3 that -- it's you-all's position.

4 If I understand it correctly, that these documents
5 allowed the assignment to occur upon some event, that event
6 occurred, Mr. Chang was then assigned all of the rights and
7 interest to Grove, Mr. Polk was then put out, and then Mr.
8 Chang authorized the filing of the bankruptcy case, is that
9 correct?

10 MR. SINGH: That's basically correct. There are
11 some names differences obviously, but not Mr. Chang
12 specifically but a different company. But Yes, Your Honor.

13 THE COURT: Correct.

14 MR. SINGH: In general --

15 THE COURT: Correct. I agree.

16 MR. SINGH: -- in general, yes. The documents --
17 the pledge agreements are such that if there's a default and
18 in 2018 -- for the '17 default in 2018, Mr. Polk signed an
19 acknowledgement that the 2017 loan that was in default was
20 in default. And again, just so that I'm clear, I'm not
21 trying to mislead the Court or anything, Mr. Polk believes
22 all of those documents or at least the -- all of those
23 documents that I'm talking about right now are fraudulent
24 documents just so that it doesn't seem like I'm not -- I'm
25 disregarding that argument.

1 THE COURT: No, no, no. I understand. Okay.

2 Thank you.

3 MR. SINGH: And so yeah, unfortunately we would
4 hope that -- have better documents in terms of something
5 that sort of lays that out, but the lead -- the pledge and
6 assignment agreement does have in the event of default then
7 they can in essence accept those pledges and assignments.
8 And so the basic argument is --

9 THE COURT: Mr. Singh, are you sure about that?

10 MR. SINGH: -- Your Honor --

11 THE COURT: You sure about that?

12 MR. SINGH: And that's sort of when we filed the
13 bankruptcy my belief is that it was. I am just a bankruptcy
14 lawyer, but corporate counsel has sort of gone through the
15 process and said, yes that's sort of how that works and
16 that's the belief that Mr. Chang and I have and that's sort
17 of how we're operating.

18 THE COURT: Okay.

19 MR. SINGH: Why I set this status conference
20 initially was, I sort had gone through that process with Mr.
21 Cornwell. We had talked about first let's figure it out,
22 what we do -- is there a global settlement, is there a way
23 to get this resolved? And so what we had looked at was and
24 that's sort of how it was filed, the CRO motion was sort of
25 put in place. That was more of a -- this is where we

1 thought this fight was going to come from when I talked to
2 Mr. Cornwell was this is -- I don't know that we -- we have
3 our positions they have their positions, it's different than
4 our position. And so if they listen as we're going down
5 that road let's figure out because the company still needs
6 be up and running. We were hoping to get a status
7 conference last week but when I spoke to Mr. Chang -- Mr.
8 Tang he was going to be out of town --

9 THE COURT: Yeah.

10 MR. SINGH: -- so that's the reason for the
11 later --

12 THE COURT: Right.

13 MR. SINGH: I want to make sure -- and what I was
14 hoping to do today, Your Honor, was set a hearing on a date
15 that everyone could come and say all the things they want to
16 say about authority to file, we can tee that up, the Court
17 could make a decision on that -- we could be right, we could
18 be wrong -- the Court makes a --

19 THE COURT: Right.

20 MR. SINGH: -- decision. And then from there we
21 go where we go and everyone has the ability to kind of say
22 what they want to say and enough time to get all the things
23 on plate and get all the things on board. And but I think
24 this has been --

25 THE COURT: So Mr. Singh, let me ask you one

1 question.

2 MR. SINGH: Uh-hu.

3 THE COURT: I get that, and I think that makes
4 sense. Talk to me about the September 3rd filing petition.
5 That's going to come up so you might as well give me the
6 10,000-foot level. I don't see any signatures on that
7 petition and that's been raised -- so why don't you tell me
8 about that.

9 MR. SINGH: So that was -- that was a purely a
10 mess up in my office. That was a September 7th, we got all
11 the documents probably about an hour before the case was
12 filed, and I just uploaded the wrong document. So I had
13 everything, but the document -- if the Court looks I think
14 it got filed somewhere on eight minutes before. We had
15 filed -- I can file the signatures. I have them. It's just
16 I didn't actually realize we filed the wrong document just
17 because we were moving so quickly.

18 THE COURT: Right.

19 MR. SINGH: That is purely my fault on that
20 document being filed.

21 THE COURT: So let me ask you as well, the
22 estimated assets that are checked on either this one or the
23 amended, says 0 to 50,000. I think in the motion, I know
24 I'm jumping ahead -- there's a CRO motion where you're
25 seeking to sell something for about half a million. So

1 what's -- I'm just trying to understand the size of the
2 case.

3 MR. SINGH: So and this is --- and just the way we
4 came in, in terms of because -- again it's undisputed Mr.
5 Polk was running this company but for and until those liens
6 -- those assignments were accepted. So the main
7 (indiscernible) that we know of and I have a motion to
8 extend the deadline but I didn't file -- when this motion
9 came down, I sort of said, okay, let me pause on all of
10 those. And I don't want it to look as though I'm trying to
11 railroad over anyone in terms of their ability to come fight
12 and say no this -- should be dismissed and so I have all of
13 those. One of them is how (indiscernible). The second is a
14 motion to extend time.

15 The main asset that I believe is here is the
16 building at 411 North Main that the receiver is collecting
17 all the rent on. At this moment in time, I believe from the
18 receiver's notices in the state court, there's approximately
19 \$200,000 worth of rent that the receiver is collecting. The
20 value of that building is sort of at this point in time
21 contested I guess -- it was sold in 2019, for 7.5 million.
22 The appraisal at the moment is 4.2 million, is my
23 understanding, and there's a huge leak and a roof problem
24 that's going to cause about \$500,000.

25 So when I got onto the case one of the hopes was

1 that with Mr. Cornwell's client is that we would -- my
2 client would be willing to do a DIP loan, get the roof
3 fixed, get the place sort of pinned up sort of say and then
4 sell it for enough to pay off all the DIP. And that's sort
5 of what we were rounding about before I spoke to Mr. Chang
6 and he sort of -- he told me that their stance of the
7 documents were not accurate or fraudulent documents.

8 THE COURT: Got it.

9 MR. SINGH: And so --

10 THE COURT: Okay.

11 MR. SINGH: -- that's sort of why I sort of paused
12 and backed up because I didn't want it to seem as though we
13 were just sort of plowing forward and didn't listen to all
14 the folks that we sort of circled up with and again I'll
15 just go over the --

16 THE COURT: I understand.

17 MR. SINGH: -- and sort of given that same
18 overview of here's where I think we are, here's where -- I
19 want everyone to be able to come tell the Court what it is
20 they want to tell them, they have their day in Court, and
21 they have the opportunity to make all of those statements.
22 We can then defend those statements. We win or we lose, and
23 then we go on down the road. But the CRO motion I wanted to
24 make sure I copied, because there are things -- there's rent
25 being collected and things being there.

1 There is a state court receiver, but the state
2 court receiver -- in the state court receiver appointment
3 only allows them to do a certain thing, mainly collect rent,
4 try to make a settlement, allow the foreclosure, pay
5 utilities. And so when I spoke with Mr. Cornwell in terms
6 of someone who one had the ability to do it, and two sort
7 off had the cost structure that I think we're looking at the
8 same rate as the receiver \$350 -- we pitched -- we talked
9 about folks that would be in that range, that had some
10 bankruptcy experience that would be able to do what needed
11 to be done. And we sort of coalesced on Mr. Quinn
12 (phonetic) and that's how he came about.

13 And that's primarily just because we wanted --
14 that was more of a we wanted someone that -- both of the
15 parties --

16 THE COURT: Okay

17 MR. SINGH: -- in this litigation, like most
18 litigation, don't like each other, no one likes each other.
19 Fortunately Mr. Cornwell has a pretty good relationship and
20 so we sort of talked that through and we thought that would
21 have been a good way to go, and that's why that motion got
22 filed. But I still think the lynch pin issue is the
23 authority and then we can push all those things. Because if
24 the Court finds that we did have authority and we are wrong,
25 then I think that none of the other motions matter. If

1 although the Court finds that we are right and we have the
2 authority, then we don't want to wait on some of those
3 things to get going and that's sort of how we have that teed
4 up in that manner, Your Honor.

5 THE COURT: Yeah. Yeah. I get it. Okay.

6 Mr. Volberding, let me give you an opportunity to
7 tell me anything you want, respond how you want, the floor
8 is yours.

9 MR. VOLBERDING: Thank you, sir. Can you hear me?

10 THE COURT: Yeah.

11 MR. VOLBERDING: -- Can you hear me okay, sir?

12 THE COURT: Yeah. And again, at this point I
13 don't want to -- you don't have to kind of introduce any
14 evidence, I don't want to get into that, I just want to kind
15 of keep it high level and give you an opportunity to address
16 the Court. Thank you.

17 MR. VOLBERDING: Yes, sir. High level, very high
18 level. I think what is before you, Judge Lopez, is this.
19 Is that a second tier creditor -- a second tier secured
20 creditor who lost in state court twice, in two different law
21 suits, who did not file a motion for a new trial, who did
22 not seek relief from either of the two Houston Court of
23 Appeals is seeking to make an end run around those state
24 court rulings. And is seeking, as a creditor, to come in
25 and do an involuntary bankruptcy action against the debtor

1 in violation of all the strictures of section 303. I based
2 that ascertain on really three concepts. Three high level
3 concepts here.

4 Number one, is that I'm going to use Chawdry
5 (phonetic) as the party here, because I think that's what's
6 really driving all of these. Mr. Chawdry, his claims, if
7 you want to use that term broadly, his claims to seize Grove
8 and therefore seize the six-story office building, are all
9 barred by state law procedure and substandard law. I've
10 laid that out in the motion in my response. And I note you
11 very well understand that state law controls. There's state
12 law property, there is no federal property rules, and I so I
13 know you're familiar with those rules. But all of that
14 litigation X where he had the opportunity to litigate this
15 so-called claim, based on these so-called equity release
16 agreements. He waived them, he defaulted them, they were
17 mandatory counter claims, none of these documents are
18 recorded, we didn't see any of these documents until
19 yesterday when Mr. Singh filed them. There has been two
20 years of litigation with discovery, all the standard request
21 for production, interrogatories, pleadings, factual
22 assertions, an affidavit is in the record from Mr. Chawdry,
23 none of this has been said. So I can -- at a high-level
24 state law bars -- state law and procedure bars what he's
25 trying to do today.

1 Second, the 2009 purported equity pledge
2 agreement is invalid on its face. You can tell that, it
3 doesn't have certain language that's missing, it's missing
4 an assignee of the pledge. It doesn't have any procedures
5 for this so called activations that they've invented, this
6 term called activation that I've never heard of before.
7 None of these procedures exist in this purported 2009 equity
8 pledge agreement. And that's the lynch pin of why they're
9 here, is this so-called agreement which I think you can and
10 should ignore.

11 And third, the 2017, purported equity pledge
12 agreement is invalid as well. Putting aside whether it was
13 legitimate at the time, subsequent in this in the 2019
14 refinancing in which the parties signed new agreements,
15 signed new documents, provided new consideration, suddenly
16 it (indiscernible) into litigation in 2019 and whatever
17 existed in 2017 is by the boards, so neither of these equity
18 pledge agreements are valid. One is invalid on its face,
19 the other invalid by (indiscernible) if it was invalid -- if
20 it was actually valid at the time.

21 I will stop there, subject to your questions, sir.

22 THE COURT: Yeah. Thank you very much.

23 Mr. Cornwell --

24 MR. SHEPHERD: -- I know Your Honor --

25 THE COURT: -- is there anything you wish to say?

1 MR. SHEPHERD: -- I would like to say a couple of
2 things in response to Mr. Volberding.

3 THE COURT: All right. Just tell me --
4 I'll get to you. I'll get to you.

5 MR. SHEPHERD: -- things about the state court --

6 THE COURT: I want to go to Mr. Cornwell next and
7 then I'll go to --

8 MR. SHEPHERD: Yes, sir.

9 THE COURT: -- you, Mr. Shepherd, I promise.

10 MR. CORNWELL: Thank you very much, Your Honor. I
11 appreciate an opportunity -- I'll keep it very brief. I
12 certainly agree with -- Mr. Volberding said if not all and
13 even a whole lot of what Mr. Singh said. I think the
14 representations about discussions we've had, about what this
15 case might look like at this stage in bankruptcy your
16 absolutely right. I've got nothing but positive glowing
17 things to say about Mr. Quinn. And frankly the need, if we
18 remain in bankruptcy for some intermediary to take the keys
19 to the car, and I think there will be a time, if we get past
20 today, and maybe the next hearing to discuss that. But I'll
21 just leave that as all those statements have been said and
22 look forward to working with the parties if we get there.

23 I will say that the lender, Broadmark, as we're
24 affectionally referred to, is very concerned about this
25 last-minute foreclosure stoppage with documents that we had

1 never heard of before. And we've seen them now, because the
2 debtor -- the purported debtor filed them last night, and
3 we've got some real questions about whether they're
4 effective, whether they're authentic, and frankly just the
5 timeline of how all this happened, in light of the fact that
6 through several different state court proceedings, as
7 recently as July and August -- I think there were five
8 different hearings where all or most of the parties before
9 Your Honor, right now -- were participant relating
10 specifically to foreclosure and the underlying loan
11 documents between us and Grove and the second lien holder in
12 Grove, and the pledge or authority to act was never once
13 raised. And so we've got some concerns.

14 On top of that, Your Honor, we've got some real
15 concerns, now that a bankruptcy has been filed what's
16 happening at the property. I understand and very much
17 appreciate that Mr. Kretzer has continued his role as
18 receiver and I talked to Mr. Singh about that and I don't
19 believe the purported debtor, I can't find the right
20 phraseology here Your Honor has allowed that to happen
21 without objection. I think it's frankly best for all
22 parties involved that the properties actively managed. But
23 anything we can do today to make sure that everybody knows
24 their role and that the property is safe and value is
25 protected, Broadmark would very much appreciate.

1 THE COURT: Thank you.

2 Mr. Shepherd.

3 MR. SHEPHERD: Yes. Can you hear me okay, Judge?

4 THE COURT: Yes.

5 MR. SHEPHERD: Thank you. I wanted to clear up a
6 couple of things Mr. Volberding represented.

7 One of the things he said is that there's been
8 some kind -- at least it sounded like there's been some kind
9 of adjudication of these lawsuits. There are four lawsuits
10 that have been filed among the parties. Two by Mr. Polk
11 himself, one by Broadmark, and one by Daiyo. And none of
12 the lawsuits have been fully adjudicated. There has been
13 absolutely no ruling on any of the substantive matters in
14 any of those cases. They were in four different courts, and
15 the 2019 lawsuit had gotten delayed on account of COVID and
16 an arbitration that ultimately did not go forward, because
17 the arbitrator recused herself.

18 And it gets back before Judge Dollinger in the
19 189th Harris County District Court. And all of the parties
20 are now, by virtue of a motion that Daiyo filed to try and
21 streamline the litigation, because it was in four different
22 courts -- over objection from all parties, Daiyo
23 consolidated, sought to consolidate all four cases into the
24 first filed lawsuit in Judge Dollinger's court in the 189.
25 All of those cases are now consolidated, those cases were

1 going forward, and Broadmark with full steam ahead was
2 attempting to foreclose, even though Mr. Polk had sued Daiyo
3 alleging forgery, sued in the separate lawsuit, which
4 actually we just recently found out about, because nobody
5 had even disclosed this to us.

6 Second lawsuit Grove filed was against the title
7 company, alleging that the title company forged documents.
8 So all the people that forged documents, but nevertheless he
9 admits he still owes three-and-a-half million dollars to
10 Daiyo. Even at one point was alleging that the Broadmark
11 loan documents were also forged. So there's a lot of things
12 being bounced around out there, but Mr. Volberding says
13 there's been some kind of ruling that were against Daiyo or
14 something has been adjudicated. There is absolutely not a
15 single thing that has been adjudicated in any of these cases
16 except for the denial of temporary injunction. Which while
17 we still disagree with that, all of the in fighting going on
18 with the parties, that's the only thing that's been ruled
19 on. But there's been absolutely no adjudication of any
20 different substance of fact in any of these cases.

21 THE COURT: Thank you.

22 Anyone else wish to address the Court?

23 MR. TANG: If I may real briefly, Your Honor.

24 THE COURT: Yes, sir. Just state your name for
25 the record, just we've got a clean a record.

1 MR. TANG: Thank you, Your Honor. David Tang for
2 the -- how do I word this -- for Harold Polk and Grove
3 Enterprises before the (indiscernible) assignment was -- the
4 (indiscernible) before the assignment.

5 Your Honor, I want to clarify just a little bit of
6 what Mr. Sheperd had said. Mr. Branch Shepherd had said.
7 There's actually -- let me start with a 10,000 foot and go
8 down, maybe that's easier. I think that's how this is
9 proceeding.

10 Your Honor, broadly speaking there's two equity
11 pledge assignments, 2017 and 2019. I'm going to take the
12 2019, first because, in relation to time, it relates more
13 this transaction, because the transaction (indiscernible)
14 over the loss of most (indiscernible) is around that time.
15 The 2017 pledge, you know, had nothing to do with this
16 building -- the 2019 pledge was purported executed on
17 January 17th. We're saying that's a forgery by itself.
18 That equity pledge agreement. The equity -- the 2019,
19 equity pledge agreement is condition on a payment of a
20 promissory note, Your Honor --

21 THE COURT: Hold on a second, I want to --

22 MR. TANG: -- that was reported --

23 THE COURT: -- I want to make sure I hear you
24 correctly. You're saying that which document is a forgery?

25 MR. TANG: The 2019 equity pledge agreement, Your

1 Honor.

2 THE COURT: Okay. Thank you.

3 MR. TANG: The one that I think everybody's been
4 talking about. The one that's more in relation to the
5 actual property that we manage right now.

6 THE COURT: Okay. Okay.

7 MR. TANG: And then so the 2019 equity pledge
8 agreement, you know, is I guess was activated I guess, it
9 comes into effect if my client defaults on a promissory
10 note. What it says in the equity pledge agreement if I
11 remember it right. And the promissory note is worth an
12 amount roughly 3.5 million. That promissory note, Your
13 Honor, which is Exhibit No. 5 I believe in Mr. Singh's
14 response to the receiver's motion to appear, that -- clearly
15 notarized by a man named Richard Milliman (phonetic), Your
16 Honor, is his name.

17 I took Mr. Milliman's deposition, one of these
18 companion lawsuits that Mr. Shepherd was talking about. If
19 I remember correctly he says I don't know what this document
20 is, I don't remember notarizing it. I said let me see a
21 notary book. I did not keep a notary book, David, so I
22 can't help -- David, me, David Tang that's in question. He
23 said I did not keep a notary book. Well he says, I don't
24 recognize this document. And that's my signature, that's my
25 stamp, but I don't remember seeing it. And he goes on to

1 detail -- why don't you remember signing the -- he goes
2 promissory notes aren't typically notarized in the course of
3 business. You know, (indiscernible) my client before
4 (indiscernible) I did not sign that promissory note for \$3.5
5 million. That's not a signature. But it's notarized like
6 it was. The notary has stated in his deposition -- I don't
7 remember notarizing that. I don't have a book to even show
8 you, David, that Mr. Polk was in front of me when I
9 notarized it -- purportedly notarized it, right.

10 So what's just a little bit more muddled than this
11 is as I sued the title company, Your Honor, right, they
12 produced another promissory note around the same day for
13 \$1.5 million. Now I'm getting a little bit closer to the
14 ground level here, Your Honor, but I just feel it's
15 important to talk about that particular set of
16 circumstances. There's another promissory note made to
17 Daiyo's favor very much like the 3.5 million that's
18 purportedly signed by my client, but the notary -- in there,
19 right, is blank. But they purport it has a signed
20 signature, but it has a different amount on there right.
21 And I believe it's dated January the 11th.

22 So the equity pledge agreement that they're
23 putting in front of you, Your Honor, the 2019, is based on
24 \$3.5 million note that the notary cannot verify that he
25 notarized, has suspicions about it, and (indiscernible)

1 didn't sign it and then we look at the same week of that
2 transaction, there's a second promissory note that is nearly
3 identical to the one that they produced for 1.5 million that
4 purportedly has my client's signature, but the notary stamp
5 there is a notary (indiscernible) is not filled in nor
6 signed. But it's the same (indiscernible) that was
7 purportedly signed on the 18th. That is -- and I'm not
8 being critical, Your Honor --

9 THE COURT: Okay.

10 MR. TANG: As I'll now in closing -- documents --

11 THE COURT: Hold on. Hold on. I think there's
12 some background noise, if everyone can please put your
13 phones on mute. Not you Mr. Tang, just everyone else, I
14 think I heard some papers rattling. I couldn't hear you to
15 well. Okay. Go ahead, sir. In closing.

16 MR. TANG: No. Like I said -- the person
17 (indiscernible) everything I just wish the title company and
18 everybody would use staples. There seems to be a lot of
19 documents floating around these days, right.

20 THE COURT: Okay. Thank you, sir.

21 MR. TANG: And so -- and so there seems to be two
22 conflicting notes that remain the basis of the pledge,
23 different numbers, the bottom line is my client didn't sign
24 either one of them. The one that's notarized, the notary
25 has said I don't even remember notarizing that, I don't

1 remember Harold being in front of me on the 17th or the
2 18th. Because Harold was in front of me on the 11th not the
3 17th or 18th. And so up on a macro level and a little bit
4 down into the rows that's our contention on the 2019 pledge
5 agreement, Your Honor.

6 THE COURT: Okay. Thank you.

7 MR. TANG: Do you have any questions for me, Your
8 Honor -- 2017 or --

9 THE COURT: No. No. I want to hear from the U.S.
10 Trustee. Mr. Ruff.

11 MR. RUFF: Good morning, Your Honor. So I think
12 our view, really I think the proposal by Mr. Singh to --
13 this authority to file is a gating issue, anything else
14 should probably be pushed off until that is resolved. And
15 then, you know, we would be happy to take those other
16 matters in order.

17 THE COURT: Here's what I'm going to do folks, and
18 here's the gating issue for me. Is that there was a
19 petition filed on the 7th and it was unsigned by both the
20 client and the lawyer. And that essentially the filing of
21 that petition initiated the automatic stay, right? But
22 there was no authority -- no one signed a petition under
23 penalty of perjury, but the lawyers filed and so that's a
24 certification in and of itself. And there's dating errors
25 on the petition itself. Those errors then continue to the

1 filing on the 13th. From there those documents are signed
2 under penalty of Perjury by both Mr. Chang and Ms. Tran --

3 But folks if someone could put their phones on
4 mute, I'm really asking. The reality is folks is that --

5 UNIDENTIFIED FEMALE: Okay. Oh. Okay.

6 THE COURT: Just a second.

7 UNIDENTIFIED FEMALE: -- we were going to be on
8 this though, I was on the right link, right? Okay. Good.
9 All right. All right.

10 THE COURT: I apologize.

11 UNIDENTIFIED FEMALE: Well yeah -- hang on let's
12 see what -- let me see if there's anything on --

13 THE COURT: Just a second folks.

14 UNIDENTIFIED FEMALE: -- Patrick know.

15 UNIDENTIFIED MALE: I didn't see them on there --
16 did you see them on there?

17 UNIDENTIFIED FEMALE: No.

18 UNIDENTIFIED MALE: Let's see -- no they're not on
19 there anyways.

20 THE COURT: That might have done it. Can
21 everybody still hear me? Okay. Appreciate it.

22 So bankruptcy rule 1008 says that all petitions
23 shall be verified, and the initial one wasn't verified. But
24 it might have saved everyone from me asking some really hard
25 questions about things that are to come. Because all

1 petitions are signed under penalty of perjury by and under
2 rule 90(11) for the attorneys in which 90(11)(b) says that
3 by presenting to the Court whether by signing, filing a
4 petition, or another motion the attorney is certifying it
5 has not been presented for any improper purpose, but it's
6 signed to the best of the presenter's knowledge,
7 information, and belief formed after an inquiry reasonable
8 under the circumstances that it wasn't filed for
9 frivolousness, for an improper purpose, to harass, that the
10 claims in the legal contentions therein are supported by
11 law. That the allegations and other factual contentions
12 have evidentiary support, or specifically so identified or
13 likely to have evidentiary support after a reasonable
14 opportunity for further investigation or discovery, and any
15 denials are warranted. Right.

16 And filing a bankruptcy petition is a little
17 different than just filing a motion in which can be
18 corrected. So, I'm just saying this for the non-bankruptcy
19 folks. Typically bankruptcy rules require that one file a
20 heading to look in a certain way or to contain a proposed
21 order -- all those can be corrected without violating 90(11)
22 but the rules -- when one looks at the advisory committee
23 rules and I'm looking at the ones in 1997 say that the safe
24 harbor doesn't apply to a petition, because -- right the
25 automatic stay comes in has far reaching implications,

1 right? Because now creditors can't exercise it, so it's a
2 little different than fixing a heading or adding a proposed
3 order later or you know, adding another signature. So that
4 means a lot.

5 So to me there was a filing on the 7th that was
6 improper, and it was later attempted to be amended, but you
7 can't amend what should have never existed in the first
8 place. So I'm dismissing this bankruptcy case for failure
9 to file a petition correctly on the 7th that had
10 implications through the automatic stay.

11 If folks decide to file this case again, I just
12 want everybody to really look at what they think they have,
13 on both sides, and really look at what the assignments say
14 and what folks are telling me that they say, and what those
15 pledges say on its face, and if there's a default what
16 people get under the 2019 and how the membership interests
17 are defined and if there's some other documents out there, I
18 don't --

19 You know, Mr. Tang you talked about you know,
20 really, really -- I call it some real serious territory.
21 And everybody should really take a hard look because folks
22 are going to start -- if this case gets filed again -- and
23 it may get filed this afternoon in Houston, I don't know --
24 but everybody better take a hard look, because I'll be
25 looking really hard at what folks are alleging on the

1 petition and who signed the petition, and what authority
2 they think they have and whether it's reasonable, and what
3 are the implications of filing a petition, and what
4 information they've done and how they did it.

5 I want folks to really look at the -- I want folks
6 to look at the Texas UCC law, I want folks to look exactly
7 at these -- what they're going to ask me to do. And if
8 other folks are going to make allegations in this case about
9 fraud, right, I'm going to take those allegations really
10 serious as well. And everybody -- and I don't know where
11 this goes, but I think everybody ought to take a really hard
12 look, because if there is fraud, that's going to have to get
13 addressed, right? And it's going to get addressed in a
14 manner that I'm not sure folks are going to want -- you
15 know, I'll deal with it.

16 If there are allegations -- unfounded allegations
17 of fraud and they're just being thrown around, then that's
18 going to get addressed as well. I think I'm giving everyone
19 a fair opportunity, but this case cannot continue because
20 the petition wasn't originally signed correctly and 1008 --
21 Bankruptcy Rule 1008 has to mean something.

22 You can't file an unsigned petition and then you
23 know, seven days later correct it, right? Because you know,
24 it just throws -- what do the -- what do the schedules do,
25 when did the automatic stay really go into effect? And

1 folks are really acting like it was the seventh, but that's
2 really not the case. But maybe creditors have the ability
3 to exercise remedies past the seventh and were unable to do
4 it because there was an unsigned petition, and that has
5 consequences.

6 And so I want everyone to really do the diligence
7 that is required and really look at these documents the way
8 I have. And I'm telling you, some of you-all are reading
9 these documents in a way that I just -- I don't -- when I
10 just look at the plain language of them, I don't see it. So
11 everybody has to get really comfortable about what you did
12 and the steps that you took. And whether they're permissive
13 or not.

14 Maybe's there a reasonable basis for it. Can it
15 get into evidence, no one cited a statute to me, so we never
16 got there? So I don't need to start asking really hard
17 questions on all sides, but maybe everybody can take it and
18 do the diligence now, because this case should have never --
19 never even get here, because there wasn't an original
20 petition that could not be amended. That's the way I read
21 bankruptcy rule 1008.

22 So Mr. Singh, you know, I take very seriously that
23 your firm -- you know, you say it was a mistake or an error
24 and I get it, I mean that happens. But here's the chance
25 and you said you got the docs in a timely manner, and you

1 were relying on corporate counsel and all that, I just
2 everybody ought to know that when they sign something -- and
3 I'm not just talking to Mr. Singh, I'm talking to everyone
4 here, because folks are filing some really strong words with
5 some really strong language in each one of these pleadings
6 and if you sign it, I'm going to hold you to it. And maybe
7 there's a reasonable basis to do it, maybe there's not.
8 That's not for me today.

9 So I know everybody had a bunch of evidence
10 presented, but I think the bankruptcy rules mean something
11 and I've got to -- and to me a voluntary petition may have
12 helped some parties today as a matter of fact based upon
13 where this could have gone. And I don't have to ask
14 questions of a bunch of different parties today.

15 So I'm just going to enter a very short order
16 saying for the reasons stated on the record this bankruptcy
17 case is dismissed. And if it gets refiled, we'll take up
18 all these issues. And we'll have the hearing that we talked
19 about, we just can't have it today. I'm uncomfortable
20 allowing the automatic stay to have continued from January
21 -- excuse me, from September the 7th, because technically
22 that meant that the schedules were due today or yesterday,
23 and we never got that. And I don't want folks filing more
24 things under penalty of perjury in responding to it, or
25 making stronger allegations or having hearings in which

1 folks are going to -- you know, start throwing around words.
2 Everybody you've got a chance to go do some diligence,
3 everybody on all sides. And maybe we see each other, maybe
4 we don't. I wish everyone a good day.

5 I'll just enter a very short order, thank you.
6 We're adjourned.

7 (Proceeding adjourned at 11:47 a.m.)

8 * * * * *

9 I certify that the foregoing is a correct
10 transcript to the best of my ability due to the condition of
11 the electronic sound recording of the ZOOM/telephonic
12 proceedings in the above-entitled matter.

13 /S/ MARY D. HENRY

14 CERTIFIED BY THE AMERICAN ASSOCIATION OF
15 ELECTRONIC REPORTERS AND TRANSCRIBERS, CET**337
16 JUDICIAL TRANSCRIBERS OF TEXAS, LLC
17 JTT TRANSCRIPT #64583
18 DATE FILED: SEPTEMBER 28, 2021

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